

# *The* NORTH CAROLINA **REGISTER**

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JUN 16 1992

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**ISSUE DATE: June 15, 1992**

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**Volume 7 • Issue 6 • Pages 491-625**



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

## ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

## TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provision G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the second business day after the agency resubmits the rule without changes. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down into chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions and supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

# **NORTH CAROLINA REGISTER**



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(May 1992 - December 1993)*

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date
*****						
05/01/92	04/10/92	04/17/92	05/16/92	05/31/92	06/20/92	08/03/92
05/15/92	04/24/92	05/01/92	05/30/92	06/14/92	06/20/92	08/03/92
06/01/92	05/11/92	05/18/92	06/16/92	07/01/92	07/20/92	09/01/92
06/15/92	05/22/92	06/01/92	06/30/92	07/15/92	07/20/92	09/01/92
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11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
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12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

## ***EXECUTIVE ORDERS***

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### **EXECUTIVE ORDER NUMBER 166 AMENDMENT TO EXECUTIVE ORDER NUMBER 119**

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order Number 119 is hereby amended to reorganize the North Carolina Quality Leadership Awards Council as follows:

#### **Section 1. Establishment.**

The North Carolina Quality Leadership Awards Council is hereby established. The Council shall have the following subordinate committees:

- A. the Examination Board;
- B. the Recognition Committee; and
- C. such other committees as the Council shall create.

#### **Section 2. Membership.**

The Council shall consist of not more than thirty (30) members, including:

- A. the Secretary of Economic and Community Development;
- B. the President of the University of North Carolina System;
- C. the President of the Community College System;
- D. the Science Advisor to the Governor;
- E. a member recommended by the Lieutenant Governor;
- F. a member recommended by the Speaker of the House;
- G. the President of North Carolina Citizens for Business and Industry;
- H. the President and Chairman of the Board of the North Carolina Quality Leadership Foundation;
- I. four industrial representatives appointed by the Governor; and
- J. no more than twelve (12) ranking officials of Award recipient organizations, serving three year terms starting in the year subsequent to winning the Award.

Section 7. This Order shall become effective immediately and shall not expire unless terminated by further Executive Order.

Done in Raleigh, this the 15th day of May, 1992.

### **EXECUTIVE ORDER NUMBER 167 AMENDING EXECUTIVE ORDER NUMBER 152 AND ESTABLISHING THE PERSIAN GULF WAR MEMORIAL ADVISORY COMMITTEE**

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order Number 152 is hereby amended as follows:

#### **PART I PERSIAN GULF WAR MEMORIAL COMMISSION**

#### **Section 1. ESTABLISHMENT**

There is hereby established the Persian Gulf War Memorial Commission. It shall be comprised of the following:

1. Two members of families who lost relatives in the Persian Gulf to be appointed by the Governor.
2. One member from the North Carolina Veterans' Council to be elected by the Council.
3. One member from the North Carolina Veterans' Affairs Commission to be elected by the Commission.
4. The Adjutant General of the North Carolina National Guard.
5. The Senior Commander of the United States Army Reserve from North Carolina, deployed to the Persian Gulf.
6. The Lieutenant Governor of North Carolina.
7. The Secretary of the North Carolina Department of Administration.
8. The Secretary of the North Carolina Department of Crime Control and Public Safety.
9. Not more than five at-large members.

From among the membership the Governor shall appoint a chairperson. The Commission shall meet at the call of the chairperson.

#### **Section 2. PURPOSE**

The purpose of the Commission is to select a site for construction of a Persian Gulf War Memorial, to select a design for the Memorial, to develop plans for funding, and to select a construction firm to construct the Memorial. To this end, the Commission shall establish itself as a nonprofit, Chapter 501c(3) corporation for the purpose of receipt and expenditure of donated

funds. The chairperson periodically shall advise the Governor as to the progress of the Commission.

**PART II**  
**PERSIAN GULF WAR MEMORIAL ADVISORY**  
**COMMITTEE**

**Section 1. ESTABLISHMENT**

There is hereby established the Persian Gulf War Memorial Advisory Committee. It shall be comprised of the following:

1. The base commanders of (a) Fort Bragg, (b) Camp Lejeune, (c) United States Marine Corps Air Station at Cherry Point, (d) Seymour Johnson Air Force Base, (e) Pope Air Force Base, (f) the Coast Guard Station at Fort Macon, (g) New River Air Station, and (h) Elizabeth City Coast Guard Air Station, or their designees.
2. The Director of the United States Department of Veterans' Affairs Regional Office.

**Section 2. PURPOSE**

The purpose of the Advisory Committee shall be to assist the Persian Gulf War Memorial Commission in its selection of both a site for construction of a Persian Gulf War Memorial and a design for the Memorial. The Advisory Committee shall meet with the Commission at the call of the Commission chairperson, but shall have no vote in its final decisions nor role in any fund raising activities.

**PART III**  
**ADMINISTRATION**

Administrative support for both the Commission and the Advisory Committee shall be provided by the Department of Administration and the Department of Crime Control and Public Safety. There shall be no per diem paid to members of either the Commission or the Advisory Committee; however, necessary travel and subsistence allowance may be paid in accordance with N.C.G.S. 138-5, 138-6, and 120-3.1.

**PART IV**  
**EFFECTIVE DATE**

This Order shall become effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 26th day of May, 1992.

***IN ADDITION***

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[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice  
Civil Rights Division

JRD:MAP:NT:gmh  
DJ 166-012-3  
92-1356

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

May 15, 1992

David A. Holec, Esq.  
City Attorney  
P. O. Box 1388  
Lumberton, North Carolina 28359-1388

Dear Mr. Holec:

This refers to the annexation [Ordinance No. 1324 (1992)] to the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 19, 1992.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

By:

Steven H. Rosenbaum  
Chief, Voting Section

**ORDERS OF THE TAX REVIEW BOARD**

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[This Section contains ORDERS of the TAX REVIEW BOARD issued under G.S. 105-241.2.]

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STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:

The Proposed Assessments of  
Individual Income Tax by the  
Secretary of Revenue against  
Thomas M. Royal.

)  
)  
)  
)

ADMINISTRATIVE  
DECISION NUMBER: 266

---

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 20 March 1992, upon the petition of Thomas M. Royal for review of a Final Decision of the Deputy Secretary of Revenue entered 31 October 1990 sustaining proposed individual income tax assessments and denying requests for refund of taxes paid for the tax years 1985, 1986, and 1987.

AND IT APPEARING TO THE BOARD that the findings of fact made by the Deputy Secretary of Revenue were fully supported by competent evidence of record, that the conclusions of law made by the Deputy Secretary were fully supported by the findings of fact, and that the decision by the Deputy Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Deputy Secretary of Revenue is confirmed in every respect.

Entered this the 22nd day of May, 1992.

TAX REVIEW BOARD

---

Harlan E. Boyles, Chairman  
State Treasurer

---

William W. Redman, Jr.  
Chairman, Utilities Commission

---

Jeff D. Batts

***ORDERS OF THE TAX REVIEW BOARD***

---

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:  
The Proposed Assessment of )  
Additional Inheritance tax due )  
by the Estate of Austin D. McGuire )  
by Secretary of Revenue of North )  
Carolina against Norman L. Nifong, )  
Administrator, CTA. )

ADMINISTRATIVE  
DECISION NUMBER: 267

---

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 20 March 1992, upon the petition of Norman L. Nifong, Administrator, CTA, for review of a Final Decision of the Deputy Secretary of Revenue entered 17 April 1989 sustaining a proposed assessment of additional inheritance tax due by the Estate of Austin D. McGuire against Norman L. Nifong, Administrator, CTA, together with interest as allowed by law and upon the Petitioner's Motion For Leave to Present Additional Evidence filed 6 March 1992;

AND IT APPEARING TO THE BOARD that the findings of fact made by the Deputy Secretary of Revenue were fully supported by competent evidence of record, that the conclusions of law made by the Deputy Secretary were fully supported by the findings of fact, and that the decision by the Deputy Secretary was fully supported by the conclusions of law;

AND IT FURTHER APPEARING TO THE BOARD that the evidence which the Petitioner sought leave to present in its Motion of 6 March 1992 would have no impact on the findings or conclusions of the Deputy Secretary;

IT IS THEREFORE ORDERED that the Petitioner's Motion is DENIED and the Final Decision of the Deputy Secretary of Revenue is confirmed in every respect.

Entered this the 22nd day of May, 1992.

TAX REVIEW BOARD

---

Harlan E. Boyles, Chairman  
State Treasurer

---

William W. Redman, Jr.  
Chairman, Utilities Commission

---

Jeff D. Batts

**TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services (Department of Human Resources) intends to amend rule cited as 10 NCAC 3R .1003.*

*The proposed effective date of this action is October 1, 1992.*

*The public hearing will be conducted at 2:00 p.m. on July 21, 1992 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.*

*Reason for Proposed Action: Agency is initiating rule-making proceedings as the result of the rule-making petition submitted by Bio Medical Applications of North Carolina, Inc. (BMA).*

*Comment Procedures: Written comments should be submitted to Jackie Sheppard, 701 Barbour Drive, Raleigh, North Carolina 27603-2008 by July 16, 1992. Oral comments may be given at the public hearing. Telephone (919) 733-2342.*

**CHAPTER 3 - FACILITY SERVICES**

**SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS**

**SECTION .1000 - SPECIAL CRITERIA AND STANDARDS: IN GENERAL**

**.1003 STATE MEDICAL FACILITIES PLAN**

(a) The North Carolina State Medical Facilities Plan contains the following information:

- (1) inventory of certain categories of inpatient and outpatient health care facilities, including number of beds and utilization of beds;
- (2) type of services provided by each category of health care facility;
- (3) projections of need for acute care hospitals (including rehabilitation services), long-term care facilities (including nursing homes, home health agencies, and hospice inpatient facilities), mental health facilities and end stage renal dialysis services for various geographical areas of the state;
- (4) statement of policies related to acute care facilities, rehabilitation services, long-term care, psychiatric facilities, chemical dependency facilities, and facilities for intermediate care for the mentally retarded,

which are used with other criteria contained in this Subchapter and in G.S. 131E-183 and need projections to determine whether applications proposing additional beds and services of these types may be approved under the certificate of need program; and

(5) the certificate of need review schedule and description of review categories.

(b) The annually published State Medical Facilities Plan approved by the Governor, and any duly adopted amendments or additions thereto, is hereby adopted by reference pursuant to G.S. 150B-14(c) as a rule for the calendar year during which it is in effect, provided, however, that Chapter 10 of the 1992 State Medical Facilities Plan relating to end stage renal disease ("ESRD") facilities and services is not adopted by reference and is not the applicable plan for the review of certificate of need applications for ESRD facilities and services under G.S. 131E-183(a)(1). Rather, the need methodology for ESRD facilities and services in Chapter 10 of the 1991 State Medical Facilities Plan is hereby readopted by reference pursuant to G.S. 150B-14(c) as a rule for calendar year 1992, and is the applicable plan for review of certificate of need applications for ESRD facilities and services under G.S. 131E-183(a)(1).

(c) This plan may be purchased from the Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina. This plan is also available for inspection at the Division of Facility Services.

*Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1); 42 U.S.C. 300K-2.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Human Resources/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26H .0204 and .0206.*

*The proposed effective date of this action is December 1, 1992.*

*The public hearing will be conducted at 1:30 p.m. on September 16, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, N.C. 27603.*

*Reason for Proposed Action: The disproportionate share will be continued to include the hos-*

pitals with the largest numbers of Medicaid patients.

**Comment Procedures:** Written comments concerning these amendments must be submitted by September 16, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

**Editor's Note:** These Rules have been filed as temporary amendments effective on June 1, 1992 for a period of 180 days to expire on November 30, 1992.

## **CHAPTER 26 - MEDICAL ASSISTANCE**

### **SUBCHAPTER 26II - REIMBURSEMENT PLANS**

#### **SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN**

##### **.0204 ADMINISTRATIVE RECONSIDERATION REVIEWS**

(a) Reconsideration reviews of rate determinations will be processed in accordance with the provisions of 10 NCAC 26K. Requests for reconsideration reviews must be submitted to the Division of Medical Assistance within 60 days after rate notification, unless unexpected conditions causing intense financial hardship arise, in which case a reconsideration review may be considered at any time.

(b) Operating rate reconsideration reviews are considered only on the basis of the actual additional cost of essential new services or patient mix changes incurred since the base year.

(c) Capital rate reconsideration reviews are considered only for the additional cost of new construction, renovations and equipment, consistent with the Certificate of Need approval if required.

(d) A hospital's adjusted rate for one or more of the factors cited in the Paragraphs (a) - (c) of this Rule cannot exceed a rate limit computed by applying the methods described in Rule .0202 (b) and (c) of this Subchapter to the hospital's allowable Medicaid cost in the most recent annual cost report available.

(e) Hospitals that serve a disproportionate share of low-income patients are eligible to receive rate adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to

the Division of Medical Assistance on or before April 1, 1991. The cost report data and financial information to qualify as a disproportionate share hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In subsequent years, qualifications effective July 1, of any particular year are based on each hospital's fiscal year ending in the preceding calendar year. The patient days, costs, revenues, or charges related to nursing facility services, swing-bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service, cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if:

- (1) The hospital has at least 2 obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric procedures. This requirement does not apply to a hospital which did not offer non-emergency obstetric services as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age; and
- (2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state; or
- (3) The hospital's low-income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:
  - (A) the ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and
  - (B) the ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments, divided by the hospital's total inpatient charges; or
- (4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; or
- (5) The hospital, in a ranking of hospitals in the State, from most to least in number

of Medicaid patient days provided, is among the top group that accounts for 50 percent of the total Medicaid patient days provided by all hospitals in the State.

(f) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one-fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments.

(g) For hospitals eligible under Paragraph (e) of this Rule, an additional payment adjustment may be made to each hospital for services provided in the months of April, May, and June, 1991 equal to the product of the ratio of each hospital's total Medicaid inpatient days divided by the total Medicaid inpatient days provided by all disproportionate share hospitals in the state during their fiscal years ending in 1989 multiplied by an amount of funds to be determined by the Director of the Division of Medical Assistance, but not to exceed one hundred forty million dollars (\$140,000,000). Each hospital's payment adjustment will be paid retrospectively in up to three installments. An additional payment adjustment by this methodology may be made for services provided in the months of July, August, September, October, November and December, 1991 based on the Medicaid and total inpatient days as filed in the hospital cost reports for fiscal years ending in 1990. The amount of funds to be determined by the Director shall not exceed one hundred sixty million dollars (\$160,000,000).

(h) For hospitals eligible under Paragraph (e) of this Rule, an additional payment adjustment may be made after the effective date of this Rule to each hospital for services provided in the months of January, February, March, April, May and June 1992 based on the Medicaid and total inpatient days as filed in hospital cost reports for fiscal years ending in 1990, by use of the methodology described in Paragraph (g) of this Rule. The amount of funds to be determined by the Director shall not exceed one hundred sixty million dollars (\$160,000,000). Each hospital payment adjustment will be paid retrospectively in up to three installments. An additional payment adjustment by this methodology will be made for services provided in the months of July, August, and September 1992 based on the Medicaid and total inpatient days as filed in hospital cost reports for fiscal years ending in 1991. The amount of funds to be determined by the Director shall not exceed eighty million dollars (\$80,000,000).

(i) ~~(j)~~ Except as otherwise specified in this Rule, rate adjustments are considered based on the most recent annual cost report, audited financial statements when necessary and other required information as submitted by a hospital provider. An adjustment cannot be made if the necessary information is not submitted or if the information is incomplete or incorrect. A rate adjustment can be applied retroactively to the most recent July 1 effective date, but cannot be applied to previous fiscal years.

(j) ~~(k)~~ For hospitals eligible under Paragraph (e), a payment adjustment is available for services involving exceptionally high costs or exceptionally long lengths of stay for patients under six years of age. A payment adjustment is available for all the other hospitals for such services provided to patients under one year of age. A five percent increase above the normal payment amount (as described in Paragraph (f) of this Rule) will be provided for the inpatient claims with billed charges in excess of fifty-five thousand dollars (\$55,000) or with stays in excess of 65 days. The fifty-five thousand dollar (\$55,000) threshold will be increased annually by the inflation factor described under Paragraph (c) of this Rule of the Rate Setting Methods section of this plan. This provision is effective for dates of service beginning July 1, 1991.

(k) The disproportionate share payments and payments adjustments described in Paragraphs (f), (g), (h) and (j) under 10 NCAC 26H .0204 are made in addition to the payments described in Paragraphs (a) - (f) under 10 NCAC 26H .0202.

*Authority G.S. 108A-25(b); 108A-54; 108A-55; 150B-11; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.*

#### **.0206 PAYMENT ASSURANCE**

(a) The state will pay each hospital the amount determined for inpatient services provided by the hospital according to the standards and methods set forth in this Section. In all circumstances involving third party payment, Medicaid will be the payor of last resort.

(b) If contributions are made pursuant to General Statute 143-23.2 during calendar year 1991, the Department has determined that it will use them as follows:

(1) the Department will present the contributed funds to the federal government to be matched pursuant to federal financial participation rules. The total of the contributed and matched funds hereinafter will be referred to as the "Funds" to be

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- disbursed in the order set forth in this Rule.
- (2) the contributed funds will provide the total non-federal share of Medicaid expenditures made with the Funds.
- (3) up to forty million dollars (\$40,000,000) of the Funds will be used to fund elimination of the target day provision [as described in 10 NCAC 26H .0202(h)] for fiscal years 1990-91 and 1991-92, and to further other State Medicaid purposes for those fiscal years.
- (4) any remaining Funds, not to exceed one hundred forty million dollars (\$140,000,000), will be used to make an additional payment adjustment to disproportionate share hospitals for services provided in April, May and June, 1991, as provided in Rule .0204(g) of this Section.
- (5) any remaining Funds, not to exceed twenty-two million five hundred thousand dollars (\$22,500,000), will be used to fund Medicaid provider claim payments in November or December 1991.
- (6) any remaining Funds, not to exceed one hundred sixty million dollars (\$160,000,000), will be used to make an additional payment adjustment to disproportionate share hospitals for services provided in July, August, September, October, November and December, 1991, as provided in Rule .0204(g).
- (c) If contributions are made pursuant to General Statute 143-23.2 during calendar year 1992, the Department has determined that it will use them as follows:
- (1) the contributed funds will provide the total non-federal share of Medicaid expenditures for disproportionate share hospital payments made pursuant to 10 NCAC 26H .0204(h) and the state portion of the total non-federal share for all other Medicaid expenditures attributable to such contributions.
- (2) 40.193 percent of the contributed funds will be presented to the federal government to be matched pursuant to federal financial participation rules and will be used to support Medicaid program expenditures in SFY 91-92 and/or SFY 92-93 and an amount not to exceed five hundred thousand dollars (\$500,000) to support Medicaid administrative expenditures in SFY 92-93.
- (3) the Department will present the remaining contributed funds upon receipt to the federal government to be matched pursuant to federal financial participation rules. The total of the contributed and matched funds hereinafter will be referred to as the "Funds" to be disbursed in the order set forth in this Rule.
- (4) the Funds, not to exceed one hundred sixty million dollars (\$160,000,000) will first be used to make an additional payment adjustment to disproportionate share hospitals for services provided during January through June, 1992, as provided in 10 NCAC 26H .0204(h).
- (5) the remaining Funds, not to exceed eighty million dollars (\$80,000,000), will next be used to make an additional payment adjustment to disproportionate share hospitals for services provided during July through September, 1992, as provided in 10 NCAC 26H .0204(h).
- (6) any remaining Funds, will be used to support Medicaid program expenditures in SFY 91-92 and/or SFY 92-93.
- (d) (e) Contributed funds shall be earmarked and maintained in a segregated account in accordance with General Statute 143-23.2(b).
- Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.*

## **TITLE 12 - DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Justice, State Bureau of Investigation (DCI) intends to amend rule cited as 12 NCAC 4F .0601 and adopt rules cited as 12 NCAC 4F .0602 - .0604, with changes from the proposed text noticed in the Register, Volume 7, Issue 3, pages 188 - 189.*

*The proposed effective date of this action is September 1, 1992.*

*Comment Procedures: Interested persons may present their views in written form from June 15, 1992 to July 15, 1992. Such written comments must be delivered or mailed to the Division of Criminal Information, 407 North Blount Street, Raleigh, North Carolina 27601.*

## **CHAPTER 4 - DIVISION OF CRIMINAL INFORMATION**

### **SUBCHAPTER 4F - SECURITY AND PRIVACY**

#### **SECTION .0600 - AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM**

**.0601 AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM**

(a) Agencies which meet the requirements of Subchapter 4F Rule .0201(a) of this Chapter 12 NCAC 4E .0201(a) have the capability to access the SBI's Automated Fingerprint Identification System for criminal justice purposes.

(b) Direct access may be obtained by submitting a letter of request to the SBI Assistant Director for DCI.

(c) The following data is available and may be used to make comparisons and/or obtain CCH data:

- (1) fingerprint classification;
- (2) fingerprint minutiae;
- (3) fingerprint images; and
- (4) state identification number.

(d) When the state identification number is used to obtain CCH data, dissemination requirements outlined in Rule .0401 Paragraphs (e) and (f) of this Subchapter must be followed.

(c) The acronym used for the SBI's Automated Fingerprint Identification System shall be the AFIS.

*Statutory Authority G.S. 15A-502; 114-10; 114-10.1; 114-16.*

**.0602 ELIGIBILITY FOR FULL OR LIMITED ACCESS TO THE AFIS NETWORK**

(a) Agencies which meet the requirements of 12 NCAC 4F .0201(a) shall be eligible to access the AFIS for criminal justice purposes.

(b) A request for direct access shall be submitted in writing to the SBI Assistant Director for DCI.

(c) Any request for an AFIS terminal and access must be approved by the SBI DCI Advisory Policy Board.

*Statutory Authority G.S. 114-10; 114-10.1.*

**.0603 AFIS AGREEMENT**

(a) Each eligible agency under Rule .0602 of this Section requesting an AFIS terminal shall sign an AFIS Agreement certifying that the agency head has read, and understands the requirements for security within DCI, and that the agency head will uphold the agreement, and abide by the standards and guidelines outlined in the AFIS Agreement.

(b) A current and signed copy of the AFIS Agreement for each agency may be reviewed at 407 North Blount Street, Raleigh, North Carolina.

(c) Upon determination that a violation of the AFIS Agreement has occurred, requirements

outlined in 12 NCAC 4G .0201 must be followed.

*Statutory Authority G.S. 15A-502; 114-10; 114-10.1; 114-16.*

**.0604 AVAILABLE DATA**

(a) The following data is available and may be used to make comparisons and/or obtain CCH data:

- (1) fingerprint classification;
- (2) fingerprint minutiae;
- (3) fingerprint images; and
- (4) state identification number.

(b) When the state identification number is used to obtain CCH data, dissemination requirements outlined in 12 NCAC 4F .0401(c) and (d) must be followed.

*Statutory Authority G.S. 15A-502; 114-10; 114-10.1; 114-16.*

**TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that EHNR - Environmental Management Commission intends to amend rule(s) cited as 15A NCAC 2B .0101, .0103, .0201 - .0202, .0206, .0208, .0211 - .0212, .0216.*

*The proposed effective date of this action is November 2, 1992.*

*The public hearing will be conducted at 7:00 p.m. on July 1, 1992 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, N.C.*

**Reasons for Proposed Actions:** Every three years, the U.S. Environmental Protection Agency (EPA) requires that the state review and revise, as needed, the surface water quality standards and classifications rules which are designed to protect human health and aquatic life. This review process is mandated by the Clean Water Act and is termed the Triennial Review. During the current Triennial Review cycle, EPA is requiring states to specifically address three items: 1) a definition stating that wetlands are waters of the state; 2) narrative biological standards; and 3) procedures to implement the state's Antidegradation Policy. Although wetlands are already included, in a broad sense, in the statutory definition of waters [NC General Statute 143-21(6)], a definition of wetlands is specifically included in these

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proposals. The Environmental Management Commission already has adopted narrative biological standards and procedures to implement the Antidegradation Policy, but some minor clarifications are being proposed. A summary of the proposed amendments is provided in the following section.

### **Summary of Proposed Rule Amendments:**

**15A NCAC 2B .0101(c) and (d)** - Add wildlife as use to be protected; this use is already included in .0211 and .0212.

**15A NCAC 2B .0101(g)** - Remove "significant quantities" language; removes burden of proof of what's "significant" from DEM.

**15A NCAC 2B .0103(b)** - Update methods citations. Cite DEM's Biological Monitoring SOPs.

**15A NCAC 2B .0201(c)** - Delete "or renewal"; requirements for permit "renewal" covered in boiler plate language in permit.

**15A NCAC 2B .0201(d)** - Clarify that industrial discharges will be permitted to HQWs with stringent limits and clarify language for sedimentation and erosion control plan requirements in (d)(2); staff comments on .0201(c) and (d) are part of EPA-required review of Antidegradation implementation procedures.

**15A NCAC 2B .0201(d)(2)** - Clarify reference to state and local erosion and sedimentation control plans.

**15A NCAC 2B .0202** - Delete definition of "Bioaccumulative" (definition No. 8). Add definitions of "Bioaccumulation Factor" (BAF) and "Bioconcentration Factor" (BCF) (definitions Nos. 8 and 9) to clarify the use of these terms in Rule .0208. Add definition of Biological Integrity (definition No. 10). Add definition of "Wetlands" (definition No. 43).

**15A NCAC 2B .0206(a)(3)(A) and (B)** - Clarify routes of exposure.

**15A NCAC 2B .0208(a)(2)** - Clarify that Bioaccumulation data can be used where appropriate.

**15A NCAC 2B .0211(b)(1) and (2)** - Clarify that impacts to water quality which adversely affect Biological Integrity are a violation of water quality standards; the term "biological integrity" is referred to in the statutory definition of "water pol-

lution"; these changes, along with the proposed definition of "biological integrity" clarify that causes of "water pollution" which adversely impact "biological integrity" are violations of water quality standards.

**15A NCAC 2B .0212(b)(1) and (2)** - Same clarification regarding adverse impacts to "biological integrity" as described above for .0211(b)(1) and (2).

**15A NCAC 2B .0216(e)(1)** - Clarify reference to state and local sedimentation and erosion control plans.

**15A NCAC 2B .0216(e)(1)(A) and (B)** - Clarify language pertaining to the EMC's ability to adopt more stringent criteria for stormwater runoff controls; similar language was adopted in 1990 for High Quality Waters based on comments from the Rules Review Commission's legal staff who also indicated at that time that similar comments would be made on the ORW rule at the next opportunity.

Other changes being proposed are to correct typographical errors or to update cross-references and citations. THE ENVIRONMENTAL MANAGEMENT COMMISSION (EMC) MAY ADOPT REVISIONS TO NORTH CAROLINA'S SURFACE WATER QUALITY CLASSIFICATIONS AND STANDARDS RULES THAT MAY DIFFER FROM THE REVISIONS PROPOSED HEREIN, IF THE EMC DETERMINES THAT THE FINAL ADOPTED RULES ARE A LOGICAL OUT-GROWTH OF THE NOTICE, THE PUBLIC HEARINGS AND THE HEARING COMMENTS RECEIVED, AND THE CHANGES ARE NOT A SIGNIFICANT CHANGE FROM WHAT WAS PROPOSED.

**C**omment Procedures: Notice is hereby given of a public hearing to be held by the North Carolina Department of Environment, Health, and Natural Resources on behalf of the Environmental Management Commission (EMC) concerning proposed revisions to the State's surface water quality classifications and standards rules. These revisions are being proposed in compliance with section 303(c) of the Clean Water Act which requires that states review and revise, as needed, their surface water quality classifications and standards at least once every three years. All persons interested in or potentially affected by this matter are invited to attend the public hearings being noticed herein. Comments, data, statements and other information may be submitted in writing

*prior to, during or within 30 days after the date of the last public hearing. Written public comments will be accepted, therefore, through August 1, 1992 inclusive. Comments may also be presented orally at the hearings. So that all persons desiring to speak may have an opportunity to do so, the length of verbal statements may be limited at the discretion of the hearing officers. The statutory authority for these actions is as follows: N.C. General Statutes 143-214.1, 143-214.5, 143-215.3(a)(1) and (3). The proposed effective date of the final adopted water supply classifications and standards rules is November 2, 1992. ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS OR PARTIES ARE STRONGLY ENCOURAGED TO READ THIS ENTIRE NOTICE INCLUDING THE EXPLANATION OF NOTICE PROVIDED HEREIN AND TO OBTAIN ADDITIONAL INFORMATION ON THESE PROPOSALS BY WRITING OR CALLING: Dr. Gregory Thorpe; Division of Environmental Management; P.O. Box 29535; Raleigh, North Carolina 27626-0535; (919) 733-5083.*

## **CHAPTER 2 - ENVIRONMENTAL MANAGEMENT**

### **SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING**

#### **SECTION .0100 - PROCEDURES FOR ASSIGNMENT OF WATER QUALITY STANDARDS**

##### **.0101 GENERAL PROCEDURES**

(a) The rules contained in Sections 2B .0100, 2B .0200 and 2B .0300 of this Subchapter which pertain to the series of classifications and water quality standards shall be known as the "Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."

(b) The Environmental Management Commission, prior to classifying and assigning standards of water quality to any waters of the state, will proceed as follows:

- (1) The Commission, or its designee, will determine waters to be studied for the purpose of classification and assignment of water quality standards on the basis of user requests, petitions, or the identification of existing or attainable water uses, as defined by ~~15A NCAC 2B .0202(16), 15A NCAC 2B .0202(19)~~, not presently included in the water classification.
- (2) After appropriate studies of the identified waters to obtain the data and information required for determining the proper classification of the waters or segments of

water are completed, the Commission, or its designee, will make a decision on whether to initiate proceedings to modify the classifications and water quality standards of identified waters. In the case of the Commission's designee deciding to initiate said proceedings, the designee will inform the Commission of the decision prior to scheduling a public hearing.

- (3) In the case of a petition for classification and assignment of water quality standards according to the requirements of General Statute ~~150B-16~~, 150B-20, the Director will make a preliminary recommendation on the appropriate classifications and water quality standards of the identified waters on the basis of the study findings and/or information included in the petition supporting the classification and standards changes.
- (4) The Commission will make a decision on whether to grant or deny a petition in accordance with the provisions of General Statute ~~150B-16~~ 150B-20 based on the information included in the petition and the recommendation of the Director. The Commission may deny the petition and request that the Division study the appropriate classifications and water quality standards for the petitioned waters in accordance with Subparagraph (b)(2) of this Rule.
- (5) The Director will give due notice of such hearing or hearings in accordance with the requirements of General Statute 143-214.1 and G.S. 150B, and will appoint a hearing officer(s) in consultation with the chairman of the Commission.
- (6) The hearing officer(s) will, as soon as practicable after the completion of the hearing, submit a complete report of the proceedings of the hearing to the Commission. The hearing officer(s) shall include in the report a transcript and/or summary of testimony presented at such public hearing, relevant exhibits, a summary of relevant information from the stream studies conducted by the technical staff of the Commission, and final recommendations as to classification of the designated waters and the standards of water quality and best management practices which should be applied to the classifications recommended.
- (7) The Commission, after due consideration of the hearing records and the final recommendations of the hearing officer(s), will adopt its final action with respect to

the assignment of classifications, and any applicable standards or best management practices applicable to the waters under consideration. The Commission will publish such action, together with the effective date for the application of the provisions of General Statute 143-215.1 and 143-215.2, as amended, as a part of the Commission's official rules. ~~in accordance with General Statute 150B-59.~~

- (8) The final action of the Commission with respect to the assignment of classification with its accompanying standards and best management practices shall contain the Commission's conclusions relative to the various factors given in General Statute 143-214.1(d), and shall specifically include the class or classes to which such specifically designated waters in the watershed or watersheds shall be assigned on the basis of best usage in the interest of the public.
- (c) Freshwater Classifications.
- (1) Class C; freshwaters protected for secondary recreation, fishing, ~~and~~ aquatic life including propagation and survival, ~~and~~ wildlife; all freshwaters are classified to protect these uses at a minimum;
- (2) Class B; freshwaters protected for primary recreation which includes swimming on a frequent and/or organized basis and all Class C uses;
- (3) Class WS-I; waters protected as water supplies which are in natural and uninhabited or predominantly undeveloped (not urbanized) watersheds; no point source discharges of wastewater are permitted, except those existing discharges qualifying for a General Permit according to the requirements of ~~15A NCAC 2H .0134~~ 15A NCAC 2H .0126 specifically approved by the Commission at the time of classification; and local land management programs to control nonpoint source pollution are required; suitable for all Class C uses;
- (4) Class WS-II; waters protected as water supplies which are in low to moderately developed (urbanized) watersheds; discharges are restricted to domestic wastewater (sewage) or industrial non-process waters specifically approved by the Commission; local land management programs to control nonpoint source pollution are required; suitable for all Class C uses;
- (5) Class WS-III; water supply segment with no categorical restrictions on watershed

development or discharges; suitable for all Class C uses;

- (d) Tidal Salt Water Classifications.
- (1) Class SC; saltwaters protected for secondary recreation, fishing, ~~and~~ aquatic life including propagation and survival, ~~and~~ wildlife; all saltwaters are classified to protect these uses at a minimum;
- (2) Class SB; saltwaters protected for primary recreation which includes swimming on a frequent and/or organized basis and all Class SC uses;
- (3) Class SA; suitable for commercial shellfishing and all other tidal saltwater uses;
- (e) Supplemental Classifications.
- (1) Trout waters (Tr); freshwaters protected for natural trout propagation and survival of stocked trout;
- (2) Swamp waters (Sw); waters which have low velocities and other natural characteristics which are different from adjacent streams;
- (3) Nutrient Sensitive Waters (NSW); waters subject to excessive growths of microscopic or macroscopic vegetation requiring limitations on nutrient inputs;
- (4) Outstanding Resource Waters (ORW); unique and special waters of exceptional state or national recreational or ecological significance which require special protection to maintain existing uses;
- (5) High Quality Waters (HQW); waters which are rated as excellent based on biological and physical/chemical characteristics through division monitoring or special studies, native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission, primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas designated by the Wildlife Resources Commission or other appropriate agencies, critical habitat areas designated by the Wildlife Resources Commission or the Department of Agriculture, all water supply watersheds which are either classified as WS-I or WS-II or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Environmental Management and all Class SA waters.
- (f) In determining the best usage of waters and assigning classifications of such waters, the Commission will consider the criteria specified in General Statute 143-214.1(d) and all existing uses

as defined by ~~15A NCAC 2B .0202(16)~~, ~~15A NCAC 2B .0202(19)~~. In determining whether to revise a designated best usage for waters through a revision to the classifications, the Commission will follow the requirements of 40 CFR 131.10(b),(c),(d) and (g) which are adopted by reference to include further amendments in accordance with G.S. ~~150B 14(e)~~, hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 at a cost of thirteen dollars (\$13.00).

(g) When revising the classification of waters, the Division will collect water quality data within the watershed for those substances which require more stringent control than required by the existing classification. However, such sampling may be limited to only those parameters which are suspected to be present in significant quantities of concern. If the revision to classifications involves the removal of a designated use, the Division will conduct a use attainability study as required by the provisions of 40 CFR 131.10(j) which are adopted by reference to include further amendments in accordance with G.S. ~~150B 14(e)~~, hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 at a cost of thirteen dollars (\$13.00).

*Statutory Authority*      G.S.      143-214.1; 143-215.3(a)(1).

#### **.0103 ANALYTICAL PROCEDURES**

(a) Chemical/Physical Procedures. Tests or analytical procedures to determine conformity or non-conformity with standards will, insofar as practicable and applicable, conform to the guidelines by the Environmental Protection Agency codified as 40 CFR, Part 136, which are adopted by reference to include further amendments in accordance with G.S. ~~150B 14(e)~~ or such other methods as may be approved by the Director, hereby incorporated by reference including any subsequent amendments and editions

or such other methods as may be approved by the Director. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 at a cost of thirteen dollars (\$13.00).

(b) Biological Procedures. Biological tests to determine conformity or non-conformity with standards will be based on methods published by the U.S. Environmental Protection Agency as outlined in "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms, Fourth Edition" (Report No. EPA/600/4-85-013) (1991; Report No. EPA/600/4-90/027) or subsequent versions, "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Second Edition" (Report No. EPA/600/4-85-011) (1989; Report No. EPA/600/4-89/001) or subsequent versions, and "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms" (Report No. EPA/600/4-87/028) or subsequent versions, or methods published by the North Carolina Department of Environment, Health, and Natural Resources, as outlined in "Standard Operating Procedures: Biological Monitoring" (1990; Division of Environmental Management, Water Quality Section) or subsequent versions, or such other methods as approved by the Director.

*Statutory Authority*      G.S.      143-214.1; 143-215.3(a)(1).

#### **SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS OF NORTH CAROLINA**

##### **.0201 ANTIDEGRADATION POLICY**

(a) It is the policy of the Environmental Management Commission to maintain, protect, and enhance water quality within the State of North Carolina. Pursuant to this policy, the requirements of 40 CFR 131.12 are adopted by reference in accordance with General Statute ~~150B 14(b)~~, hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government

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Printing Office, Washington, D.C. 20402-9325 at a cost of thirteen dollars (\$13.00). These requirements will be implemented in North Carolina as set forth in Paragraphs (b), (c) and (d) of this Rule.

(b) Existing uses, as defined by Rule .0202(16) Rule .0202(19) of this Section, and the water quality to protect such uses shall be protected by properly classifying surface waters and having standards sufficient to protect these uses. In cases where the Commission or its designee determines that an existing use is not included in the classification of waters, a project which will affect these waters will not be permitted unless the existing uses are protected.

(c) The Commission shall consider the present and anticipated usage of waters with quality higher than the standards, including any uses not specified by the assigned classification (such as outstanding national resource waters or waters of exceptional water quality) and will not allow degradation of the quality of waters with quality higher than the standards below the water quality necessary to maintain existing and anticipated uses of those waters. Waters with quality higher than the standards are defined by Rule .0202(39) Rule .0202(42) of this Section. The following procedures will be implemented in order to meet these requirements:

- (1) Each applicant for an NPDES permit or NPDES permit expansion ~~or renewal~~ to discharge treated waste will document an effort to consider non-discharge alternatives pursuant to 15A NCAC 2H .0105(c)(2).
- (2) Public Notices for NPDES permits will list parameters that would be water quality limited and state whether or not the discharge will use the entire available load capacity of the receiving waters and may cause more stringent water quality based effluent limitations to be established for dischargers downstream.
- (3) The Division may require supplemental documentation from the affected local government that a proposed project or parts of the project are necessary for important economic and social development.
- (4) The Commission and ~~Division~~ Division will work with local governments on a voluntary basis to identify and develop appropriate management strategies and/or classifications for waters with unused pollutant loading capacity to accommodate future economic growth.

Waters with quality higher than the standards will be identified by the Division on a case-by-case basis through the NPDES permitting and

waste load allocation processes (pursuant to the provisions of 15A NCAC 2H .0100). Dischargers affected by the requirements of Paragraphs (c)(1) through (c)(4) of this Rule and the public at large will be notified according to the provisions described herein, and all other appropriate provisions pursuant to 15A NCAC 2H .0109. If an applicant objects to the requirements to protect waters with quality higher than the standards and believes degradation is necessary to accommodate important social and economic development, the applicant can contest these requirements according to the provisions of General Statute 143-215.1(e) and 150B-23.

(d) The Commission shall consider the present and anticipated usage of High Quality Waters (HQW), including any uses not specified by the assigned classification (such as outstanding national resource waters or waters of exceptional water quality) and will not allow degradation of the quality of High Quality Waters below the water quality necessary to maintain existing and anticipated uses of those waters. High Quality Waters are a subset of waters with quality higher than the standards and are as described by 15A NCAC 2B .0101(c)(5). The following procedures will be implemented in order to meet the requirements of this part:

- (1) New or expanded wastewater discharges in High Quality Waters will comply with the following:
  - (A) Discharges from new single family residences will be prohibited. Those that must discharge will install a septic tank, dual or recirculating sand filters, disinfection and step aeration.
  - (B) All new NPDES wastewater discharges (except single family residences) will be required to provide the treatment described below:
    - (i) Oxygen Consuming Wastes: Effluent limitations will be as follows:  $BOD_5 = 5 \text{ mg/l}$ ,  $NH_3 - N = 2 \text{ mg/l}$  and  $DO = 6 \text{ mg/l}$ . More stringent limitations will be set, if necessary, to ensure that the cumulative pollutant discharge of oxygen-consuming wastes will not cause the DO of the receiving water to drop more than 0.5 mg/l below background levels, and in no case below the standard. Where background information is not readily available, evaluations will assume a percent saturation determined by staff to be generally applicable to that hydroenvironment.
    - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) will be limited to effluent concentrations of 10

- mg/l for trout waters and PNA's, and to 20 mg/l for all other High Quality Waters.
- (iii) Disinfection: Alternative methods to chlorination will be required for discharges to trout streams, except that single family residences may use chlorination if other options are not economically feasible. Domestic discharges are prohibited to SA waters.
- (iv) Emergency Requirements: Failsafe treatment designs will be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs.
- (v) Volume: The total volume of treated wastewater for all discharges combined will not exceed 50 percent of the total instream flow under 7Q10 conditions.
- (vi) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations will be set for phosphorus or nitrogen, or both.
- (vii) Toxic substances: ~~In general, only the discharge of domestic or non-process wastewater will be permitted into High Quality Waters.~~ In cases where complex ~~discharges~~ wastes (those containing or potentially containing toxicants) may be ~~currently~~ present in ~~the~~ a discharge, a safety factor will be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent will be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity will be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under design conditions. In all instances there may be no acute toxicity in an effluent concentration of 90 percent as measured by the North Carolina "Pass/Fail Methodology for Determining Acute Toxicity in a Single Effluent Concentration". Ammonia toxicity will be evaluated according to EPA guidelines promulgated in the Ammonia Criteria Development Document (1986); EPA document number 440-5-85-001; NTIS number PB85-227114; July 29, 1985 (50 FR 30784).
- (C) All expanded NPDES wastewater discharges in High Quality Waters will be required to provide the treatment de-
- scribed in part (1)(B) of this Rule, except for those existing discharges which expand with no increase in permitted pollutant loading.
- (2) Development activities which require a ~~Sedimentation Erosion~~ an Erosion and Sedimentation Control Plan in accordance with rules ~~15A NCAC, Chapter 4~~ established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program, and which drain to and are within one mile of High Quality Waters (HQW) will be required to control runoff from the one inch design storm as follows:
- (A) Low Density Option: Developments which limit single family developments to one acre lots and other type developments to 12 percent built-upon area, have no stormwater collection system as defined in 15A NCAC 2H .1002(13), and have built-upon areas at least 30 feet from surface waters will be deemed to comply with this requirement, unless it is determined that additional runoff control measures are required to protect the water quality of High Quality Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case-by-case basis. Activities conforming to the requirements described in 15A NCAC 2H .1003(a) [except for Subparagraphs (2) and (3) which apply only to waters within the 20 coastal counties as defined in 15A NCAC 2H .1002(9)] will also be deemed to comply with this requirement, except as provided in the preceding sentence.
- (B) High Density Option: Higher density developments will be allowed if stormwater control systems utilizing wet detention ponds as described in 15A NCAC 2H .1003(i), (k) and (l) are installed, operated and maintained which control the runoff from all built-upon areas generated from one inch of rainfall, unless it is determined that additional runoff control measures are required to protect the water quality of High Quality Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case-by-case basis. The size of the control system must take into account the runoff from any pervious surfaces draining to the system.

(C) All waters classified WS-I or WS-II and all waters located in the 20 coastal counties as defined in Rule 15A NCAC 2H .1002(9) are excluded from this requirement since they already have requirements for nonpoint source controls.

If an applicant objects to the requirements to protect high quality waters and believes degradation is necessary to accommodate important social and economic development, the applicant can contest these requirements according to the provisions of G.S. 143-215.1(e) and 150B-23.

(e) Outstanding Resource Waters (ORW) are a special subset of High Quality Waters with unique and special characteristics as described in Rule .0216 of this Section. The water quality of waters classified as ORW shall be maintained such that existing uses, including the outstanding resource values of said Outstanding Resource Waters, will be maintained and protected.

*Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **.0202 DEFINITIONS**

The definition of any word or phrase used in these rules shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina. The following words and phrases, which are not defined in this article, will be interpreted as follows:

(1) Acute toxicity to aquatic life means lethality or other harmful effects sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to a short-term exposure (relative to the life cycle of the organism) to a specific chemical or mixture of chemicals (as in an effluent). Short-term exposure for acute tests is generally 96 hours or less. Acute toxicity will be determined using the most appropriate of the following procedures:

- (a) for specific chemical constituents or compounds, acceptable levels will be equivalent to a concentration of one-half or less of the Final Acute Value (FAV) as determined according to "Guidelines for Deriving Numerical Water Quality Criteria for the Protection of Aquatic Life and its Uses" published by the Environmental Protection Agency and referenced in the Federal Register (50 FR 30784, July 29, 1985).
- (b) for specific chemical constituents or compounds, acceptable levels will be equivalent to a concentration of one-third or less of the lowest available LC50 value.

(c) for effluents, acceptable levels are defined as no statistically measurable lethality (99 percent confidence level using Students t test) during a specified exposure period. Concentrations of exposure will be determined on a case-by-case basis.

(d) in instances where detailed dose response data indicate that acceptable levels are significantly different from those defined in this Rule, the Director may determine on a case-by-case basis an alternate acceptable level through statistical analyses of the dose response curve.

(2) Acute to Chronic Ratio (ACR) means the ratio of acute toxicity expressed as an LC50 for a specific toxicant or an effluent to the chronic value for the same toxicant or effluent.

(3) Agricultural uses include the use of waters for stock watering, irrigation, and other farm purposes.

(4) Approved treatment, as applied to water supplies, means treatment accepted as satisfactory by the authorities responsible for exercising supervision over the quality of water supplies.

(5) Average (except bacterial) means arithmetical average and includes the analytical results of all samples taken during the specified period; all sampling shall be done as to obtain the most representative sample under prevailing conditions:

- (a) Daily Average for dissolved oxygen, shall be of at least four samples;
- (b) Weekly Average means the average of all daily composite samples obtained during the calendar week; if only one grab sample is taken each day, the weekly average is the average of all daily grab samples; a minimum of three daily grab samples is needed to calculate a weekly average;
- (c) Monthly Average means the average of all daily composites (or grab samples if only one per day) obtained during the calendar month.

The definitions in this Paragraph do not affect the monitoring requirements for NPDES permits but rather are to be used by the Division along with other methodologies in determining violations of water quality standards. Arithmetical averages as defined by this Rule, and not confidence limits nor other statistical descriptions, will be used in all calculations of limitations which require the use of averages pursuant to this Rule and 40 CFR 122.41(l)(4)(iii).

- (6) Best Management Practice (BMP) means a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
- (7) Best usage of waters as specified for each class means those uses as determined by the Environmental Management Commission in accordance with the provisions of Article 21, Chapter 143-214.1, General Statutes of North Carolina.
- (8) Bioaccumulative means substances which are taken up, concentrated, and retained by an organism from its environment.
- (8) Bioaccumulation factor (BAF) is a unitless value that describes the degree to which substances are taken up or accumulated into tissues of aquatic organisms from water directly and from food or other ingested materials containing the accumulated substances, and is usually measured as a ratio of a substance's concentration in tissue versus its concentration in water in situations where exposure to the substance is occurring from both water and the food chain.
- (9) Bioconcentration factor (BCF) is a unitless value that describes the degree to which substances are absorbed or concentrated into tissues of aquatic organisms from water directly and is usually measured as a ratio of a substance's concentration in tissue versus its concentration in water in situations where exposure to the substance is occurring from water only.
- (10) Biological integrity means the ability of an aquatic ecosystem to support and maintain a balanced and indigenous community of organisms having a species composition, diversity and functional organization comparable to that of the natural habitats within a region or subregion.
- (11) Chronic toxicity to aquatic life means any harmful effect sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to long-term exposure (relative to the life cycle of the organism) or exposure during a substantial portion of the duration of a sensitive period of the life cycle to a specific chemical substance or mixture of chemicals (as in an effluent). In absence of extended periods of exposure, early life stage or reproductive toxicity tests may be used to define chronic impacts.
- (12) Chronic value for aquatic life means the geometric mean of two concentrations identified in a controlled toxicity test as the No Observable Effect Concentration (NOEC) and the Lowest Observable Effect Concentration (LOEC).
- (13) Concentrations are the mass of a substance per volume of water and for the purposes of this Section will be expressed as milligrams per liter (mg/l), micrograms per liter (ug/l), or nanograms per liter (ng/l).
- (14) Critical habitat areas are defined for the purposes of the rules of this Section as those waters which are considered to be essential for the continued existence of an endangered or threatened species, and which are so designated by the NC Wildlife Resources Commission for animals or the NC Department of Agriculture for plants.
- (15) Designated Nonpoint Source Agency means those agencies specified by the Governor in the North Carolina Nonpoint Source Management Program, as approved by the Environmental Protection Agency.
- (16) Discharge is the addition of any man-induced waste effluent either directly or indirectly to state surface waters.
- (17) Division means the Division of Environmental Management or its successors.
- (18) Effluent channel means a discernable confined and discrete conveyance which is used for transporting treated wastewater to a receiving stream or other body of water as provided in Rule .0215 of this Section.
- (19) Existing uses mean uses actually attained in the water body, in a significant and not incidental manner, on or after November 28, 1975, whether or not they are included in the water quality standards, which either have been actually available to the public or are uses deemed attainable by the Environmental Management Commission. At a minimum, uses shall be deemed attainable if they can be achieved by the imposition of effluent limits and cost-effective and reasonable best management practices (BMPs) for nonpoint source control.
- (20) Fishing means the taking of fish by sport or commercial methods as well as the consumption of fish or shellfish or the propagation of fish and such other aquatic life as is necessary to provide a suitable environment for fish.
- (21) Freshwater means all waters that under natural conditions would have a chloride ion content of 500 mg/l or less.
- (22) LC50 means that concentration of a toxic substance which is lethal (or immobilizing, if appropriate) to 50 percent of the organisms tested during a specified

- exposure period. The LC50 concentration for toxic materials shall be determined for appropriate sensitive species under aquatic conditions characteristic of the receiving waters.
- (23) (24) Lower piedmont and coastal plain waters mean those waters of the Catawba River Basin below Lookout Shoals Dam; the Yadkin River Basin below the junction of the Forsyth, Yadkin, and Davie County lines and all of the waters of Cape Fear; Lumber; Roanoke; Neuse; Tar-Pamlico; Chowan; Pasquotank; and White Oak River Basins, except tidal salt waters which are assigned S classifications.
- (24) (25) MF is an abbreviation for the membrane filter procedure for bacteriological analysis.
- (25) (26) Mixing zone means a region of the receiving water in the vicinity of a discharge within which dispersion and dilution of constituents in the discharge occurs and such zones shall be subject to conditions established in accordance with 15A NCAC 2B .0204(b).
- (26) (27) Mountain and upper piedmont waters mean all of the waters of the Hiwassee; Little Tennessee, including the Savannah River drainage area; French Broad; Broad; New; and Watauga River Basins and those portions of the Catawba River Basin above Lookout Shoals Dam and the Yadkin River Basin above the junction of the Forsyth, Yadkin, and Davie County lines.
- (27) (28) Nonpoint source pollution means pollution which enters waters mainly as a result of precipitation and subsequent runoff from lands which have been disturbed by man's activities and includes all sources of water pollution which are not required to have a permit in accordance with G.S. 143-215.1(c).
- (28) (29) Nutrient sensitive waters mean those waters which are so designated in the classification schedule in order to limit the discharge of nutrients (usually nitrogen and phosphorus). They are designated by "NSW" following the water classification.
- (29) (30) Offensive condition means any condition or conditions resulting from the presence of sewage, industrial wastes or other wastes within the waters of the state or along the shorelines thereof which shall either directly or indirectly cause foul or noxious odors, unsightly conditions, or breeding of abnormally large quantities of mosquitoes or other insect pests, or shall damage private or public water supplies or other structures, result in the development of gases which destroy or damage surrounding property, herbage or grasses, or which may cause the impairment of taste, such as from fish flesh tainting, or affect the health of any person residing or working in the area.
- (30) (31) Primary Nursery Areas (PNAs) are tidal saltwaters which provide essential habitat for the early development of commercially important fish and shellfish and are so designated by the Marine Fisheries Commission.
- (31) (32) Primary recreation includes swimming, skin diving, skiing, and similar uses involving human body contact with water where such activities take place in an organized or on a frequent basis.
- (32) (33) Secondary recreation includes wading, boating, other uses not involving human body contact with water, and activities involving human body contact with water where such activities take place on an infrequent, unorganized, or incidental basis.
- (33) (34) Sensitive species for aquatic toxicity testing is any species utilized in procedures accepted by the Commission or its designee in accordance with Rules .0211(b)(3)(L) or .0212(b)(3)(L) of this Section, or the following genera:
- (a) Daphnia;
  - (b) Ceriodaphnia;
  - (c) Salmo;
  - (d) Pimephales;
  - (e) Mysidopsis;
  - (f) Champia;
  - (g) Cyprinodon;
  - (h) Arbacia;
  - (i) Penaeus;
  - (j) Menidia;
  - (k) Notropis;
  - (l) Salvelinus;
  - (m) Oncorhynchus;
  - (n) Selenastrum.
- Other genera may be accepted by the Commission or its designee on a case-by-case basis.
- (34) (35) Shellfish culture includes the use of waters for the propagation, storage and gathering of oysters, clams, and other shellfish for market purposes.
- (35) (36) Source of water supply for drinking, culinary or food-processing purposes means any source, either public or private, the waters from which are used for human consumption, or used in connection with the processing of milk, beverages, food, or other purpose which requires water meeting the Maximum Contaminant Levels (MCLs) in

the North Carolina Rules Governing Public Water Supplies, ~~40 NCAC 10D .1600 15A NCAC 18C .1500~~ as well as MCLs promulgated by the Environmental Protection Agency pursuant to the Public Health Service Act, 42 U.S.C. 201 et seq., as amended by the Safe Drinking Water Act, 42 U.S.C. 300(f) (g)-1 et seq.

(36) ~~(34)~~ Swamp waters mean those waters which are classified by the Environmental Management Commission and which are topographically located so as to generally have very low velocities and certain other characteristics which are different from adjacent streams draining steeper topography. They are designated by "Sw" following the water classification.

(37) ~~(35)~~ Tidal salt waters mean all tidal waters which are classified by the Environmental Management Commission which generally have a natural chloride ion content in excess of 500 parts per million and include all waters assigned S classifications.

(38) ~~(36)~~ Toxic substance or toxicant means any substance or combination of substances (including disease-causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

(39) ~~(37)~~ Trout waters are those waters which have conditions which will sustain and allow for trout propagation and survival of stocked trout on a year-round basis. These waters are classified by the Commission after considering the requirements of Rule .0101(b) and (c) of this Subchapter and include all waters designated by "Tr" in the water classification.

(40) ~~(38)~~ Waste disposal includes the use of waters for disposal of sewage, industrial waste or other waste after approved treatment.

(41) ~~(39)~~ Water quality based effluent limits and best management practices are limitations or best management practices developed by the Division for the purpose of protecting water quality standards and best usage of surface waters consistent with the requirements of General Statute 143-214.1 and the

Federal Water Pollution Control Act as amended.

(42) ~~(40)~~ Waters with quality higher than the standards means all waters for which the determination of waste load allocations (pursuant to Rule .0206 of this Section) indicates that water quality is sufficiently greater than that defined by the standards such that significant pollutant loading capacity still exists in those waters.

(43) ~~Wetlands are waters as defined by General Statute 143-212(6) and are areas that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.~~

*Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).*

#### **.0206 FLOW DESIGN CRITERIA FOR EFFLUENT LIMITATIONS**

(a) Water quality based effluent limitations are developed to allow appropriate frequency and duration of deviations from water quality standards so that the designated uses of receiving waters are protected. There are water quality standards for a number of categories of pollutants and to protect a range of water uses. For this reason, the appropriate frequency and duration of deviations from water quality standards is not the same for all categories of standards. A flow design criterion is used in the development of water quality based effluent limitations as a simplified means of estimating the acceptable frequency and duration of deviations. More complex modelling techniques can also be used to set effluent limitations directly based on frequency and duration criteria published by the U.S. Environmental Protection Agency pursuant to Section 304(a) of the Federal Clean Water Act as amended. Use of more complex modelling techniques to set water quality based effluent limitations will be approved by the Commission or its designee on a case-by-case basis. Flow design criteria to calculate water quality based effluent limitations for categories of water quality standards are listed as follows:

- (1) All standards except toxic substances and aesthetics will be protected using the minimum average flow for a period of seven consecutive days that has an average recurrence of once in ten years (7Q10 flow). Other governing flow strategies such as varying discharges with the receiving waters ability to assimilate wastes

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may be designated by the Commission or its designee on a case-by-case basis if the discharger or permit applicant provide evidence which establishes to the satisfaction of the Director that the alternative flow strategies will give equal or better protection for the water quality standards. Better protection for the standards means that deviations from the standard would be expected less frequently than provided by using the 7Q10 flow.

- (2) Toxic substance standards to protect aquatic life from chronic toxicity will be protected using the 7Q10 flow.
- (3) Toxic substance standards to protect human health will be:
  - (A) The 7Q10 flow for standards to protect water supply uses human health through the consumption of water, fish and shellfish from noncarcinogens;
  - (B) The mean annual flow to protect human health from carcinogens through the consumption of water, and fish (and/or shellfish) and shellfish unless site specific fish contamination concerns necessitate the use of an alternative design flow;
- (4) Aesthetic quality will be protected using the minimum average flow for a period of 30 consecutive days that has an average recurrence of once in two years (30Q2 flow).

(b) In cases where the stream flow is regulated, a minimum daily low flow may be used as a substitute for the 7Q10 flow except in cases where there are acute toxicity concerns for aquatic life. In the cases where there are acute toxicity concerns, an alternative low flow such as the instantaneous minimum release may be used on a case-by-case basis.

(c) Flow design criteria are used to develop water quality based effluent limitations and for the design of wastewater treatment facilities. Deviations from a specific water quality standard resulting from discharges which are affirmatively demonstrated to be in compliance with water quality based effluent limitations for that stand-

ard will not be a violation pursuant to G.S. 143-215.6 when the actual flow is significantly less than the design flow.

(d) In cases where the 7Q10 flow of the receiving stream is estimated to be zero, water quality based effluent limitations will be assigned as follows:

- (1) Where the 30Q2 flow is estimated to be greater than zero, effluent limitations for new or expanded (additional) discharges of oxygen consuming waste will be set at  $BOD_5 = 5 \text{ mg/l}$ ,  $NH_3 - N = 2 \text{ mg/l}$  and  $DO = 6 \text{ mg/l}$ , unless it is determined that these limitations will not protect water quality standards. Requirements for existing discharges will be determined on a case-by-case basis by the Director. More stringent limits will be applied in cases where violations of water quality standards are predicted to occur for a new or expanded discharge with the limits set pursuant to this Rule, or where existing limits are determined to be inadequate to protect water quality standards.
- (2) If the 30Q2 and 7Q10 flows are both estimated to be zero, no new or expanded (additional) discharge of oxygen consuming waste will be allowed. Requirements for existing discharges to streams where the 30Q2 and 7Q10 flows are both estimated to be zero will be determined on a case-by-case basis.
- (3) Other water quality standards will be protected by requiring the discharge to meet the standards unless the alternative limitations are determined by the Director to protect the classified water uses.
- (e) Receiving water flow statistics will be estimated through consultation with the U.S. Geological Survey. Estimates for any given location may be based on actual flow data, modelling analyses, or other methods determined to be appropriate by the Commission or its designee.

*Statutory Authority*      *G.S.*      *143-214.1;*  
*143-215.3(a)(1).*

### **.0208 STANDARDS FOR TOXIC SUBSTANCES AND TEMPERATURE**

(a) Toxic Substances. The concentration of toxic substances, either alone or in combination with other wastes, in surface waters will not render waters injurious to aquatic life or wildlife, recreational activities, public health, or impair the waters for any designated uses. Specific standards for toxic substances to protect freshwater and tidal saltwater uses are listed in Rules .0211 and .0212 of this Section, respectively. Procedures for interpreting the narrative standard for toxic substances and numerical standards applicable to all waters are as follows:

- (1) Aquatic life standards. The concentration of toxic substances will not result in chronic toxicity. Any levels in excess of the chronic value will be considered to result in chronic toxicity. In the absence of direct measurements of chronic toxicity, the concentration of toxic substances will not exceed the concentration specified by the fraction of the lowest LC50 value which predicts

a no effect chronic level (as determined by the use of acceptable acute/chronic ratios). If an acceptable acute/chronic ratio is not available, then that toxic substance will not exceed one-one hundredth (0.01) of the lowest LC50 or if it is affirmatively demonstrated that a toxic substance has a half-life of less than 96 hours the maximum concentration will not exceed one-twentieth (0.05) of the lowest LC50.

- (2) Human health standards. The concentration of toxic substances will not exceed the level necessary to protect human health through exposure routes of fish (or shellfish) tissue consumption, water consumption, or other route identified as appropriate for the water body.
- (A) For non-carcinogens, these concentrations will be determined using a Reference Dose (RfD) as published by the U.S. Environmental Protection Agency pursuant to Section 304(a) of the Federal Water Pollution Control Act as amended or a RfD issued by the U.S. Environmental Protection Agency as listed in the Integrated Risk Information System (IRIS) file or a RfD approved by the Director after consultation with the State Health director. Water quality standards or criteria used to calculate water quality based effluent limitations to protect human health through the different exposure routes are determined as follows:

- (i) Fish tissue consumption:

$$WQS = (RfD \cdot DT) \times \text{Body Weight} / (FCR \times BCF)$$

where:

WQS = water quality standard or criteria;

RfD = reference dose;

DT = estimated non-fish dietary intake (when available);

FCR = fish consumption rate (assumed to be 6.5 gm/person-day);

BCF = bioconcentration factor, or bioaccumulation factor (BAF), as appropriate.

BCF or BAF values are based on U.S. Environmental Protection Agency publications pursuant to Section 304(a) of the Federal Water Pollution Control Act as amended, literature values, or site specific bioconcentration data approved by the Commission or its designee; FCR values are average consumption rates for a 70 Kg adult for the lifetime of the population; alternative FCR values may be used when it is considered necessary to protect localized populations which may be consuming fish at a higher rate;

- (ii) Water consumption (including a correction for fish consumption):

$$WQS = (RfD \cdot DT) \times \text{Body Weight} / [\text{WCR} + (FCR \times BCF)]$$

where:

WQS = water quality standard or criteria;

RfD = reference dose;

DT = estimated non-fish dietary intake (when available);

FCR = fish consumption rate (assumed to be 6.5 gm person-day);

BCF = bioconcentration factor, or bioaccumulation factor (BAF), as appropriate;

WCR = water consumption rate (assumed to be 2 liters per day for adults).

To protect sensitive groups, exposure may be based on a 10 Kg child drinking one liter of water per day. Standards may also be based on drinking water standards based on the requirements of the Federal Safe Drinking Water Act [42 U.S.C. 300(f)(g)-1]. For non-carcinogens, specific numerical water quality standards have not been included in this Rule because water quality standards to protect aquatic life for all toxic substances for which standards have been considered are more stringent than numerical standards to protect human health from non-carcinogens through consumption of fish; standards to protect human health from non-carcinogens through water consumption are listed under the water supply classification standards in Rule .0211 of this Section; the equations listed in this Subparagraph will be used to develop water quality based effluent limitations on a case-by-case basis for toxic substances which are not presently included in the water quality standards. Alternative FCR values may be used when it is considered necessary to protect localized populations which may be consuming fish at a higher rate;

- (B) For carcinogens, the concentrations of toxic substances will not result in unacceptable health risks and will be based on a Carcinogenic Potency Factor (CPF). An unacceptable health risk for cancer will be considered to be more than one case of cancer per one million people exposed ( $10^{-6}$  risk level). The CPF is a measure of the cancer-causing potency of a substance estimated by the upper 95 percent confidence limit of the slope of a straight line calculated by the Linearized Multistage Model or other appropriate model according to U.S. Environmental Protection Agency Guidelines [FR 51 (185): 33992-34003; and FR 45 (231 Part V):

79318-79379]. Water quality standards or criteria for water quality based effluent limitations are calculated using the procedures given in Subparagraphs (A) and (B) of this Rule. Standards to protect human health from carcinogens through water consumption are listed under the water supply classification standards in Rule .0211 of this Section; standards to protect human health from carcinogens through the consumption of fish (and shellfish) only are applicable to all waters as follows:

- (i) Beryllium: 117 ng/l;
- (ii) Benzene: 71.4 ug/l;
- (iii) Carbon tetrachloride: 4.42 ug/l;
- (iv) Dioxin: 0.000014 ng/l;
- (v) Hexachlorobutadiene: 49.7 ug/l;
- (vi) Polychlorinated biphenyls: 0.079 ng/l;
- (vii) Polynuclear aromatic hydrocarbons: 31.1 ng/l;
- (viii) Tetrachloroethane (1,1,2,2): 10.8 ug/l;
- (ix) Trichloroethylene: 92.4 ug/l;
- (x) Vinyl chloride: 525 ug/l;
- (xi) Aldrin: 0.136 ng/l;
- (xii) Chlordane: 0.588 ng/l;
- (xiii) DDT: 0.591 ng/l;
- (xiv) Dieldrin: 0.144 ng/l;
- (xv) Heptachlor: 0.214 ng/l.

The values listed in (i) through (xv) in Subparagraph (B) of this Rule may be adjusted by the Commission or its designee on a case-by-case basis to account for site-specific or chemical-specific information pertaining to the assumed BCF, BAF, FCR or CPF values or other appropriate data.

- (b) Temperature. The Commission may establish a water quality standard for temperature for specific water bodies other than the standards specified in Rules .0211 and .0212 of this Section, upon a case-by-case determination that thermal discharges to these waters, which serve or may serve as a source and/or receptor of industrial cooling water provide for the maintenance of the designated best use throughout a reasonable portion of the water body. Such revisions of the temperature standard must be consistent with the provisions of Section 316(a) of the Federal Water Pollution Control Act as amended and will be noted in Rule .0218 of this Section.

*Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).*

**.0211 FRESH SURFACE WATER CLASSIFICATIONS AND STANDARDS**

- (a) General. The water quality standards for all fresh surface waters are the basic standards applicable to Class C waters. Additional and more stringent standards applicable to other specific freshwater classifications are specified in Paragraphs (e) through (f) of this Rule.

- (b) All fresh surface waters (Class C).

- (1) Best Usage of Waters. Aquatic life propagation and maintenance of biological integrity (including fishing, and fish), wildlife, secondary recreation, agriculture and any other usage except for primary recreation or as a source of water supply for drinking, culinary or food processing purposes;
- (2) Conditions Related to Best Usage. The waters will be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture; sources of water pollution which preclude any of these uses

on either a short-term or long-term basis will be considered to be violating a water quality standard;

- (3) Quality standards applicable to all fresh surface waters:

- (A) Chlorophyll a (corrected): not greater than 40 ug/l for lakes, reservoirs, and other slow-moving waters not designated as trout waters, and not greater than 15 ug/l for lakes, reservoirs, and other slow-moving waters designated as trout waters (not applicable to lakes and reservoirs less than ten acres in surface area); the Commission or its designee may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;

- (B) Dissolved oxygen: not less than 6.0 mg/l for trout waters; for non-trout waters, not less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l; swamp waters, lake coves or backwaters, and lake bottom waters may have lower values if caused by natural conditions;
- (C) Floating solids; settleable solids; sludge deposits: only such amounts attributable to sewage, industrial wastes or other wastes as will not make the water unsafe or unsuitable for aquatic life and wildlife or impair the waters for any designated uses;
- (D) Gases, total dissolved: not greater than 110 percent of saturation;
- (E) Organisms of the coliform group: fecal coliforms not to exceed a geometric mean of 200/100ml (MF count) based upon at least five consecutive samples examined during any 30 day period; nor exceed 400/100ml in more than 20 percent of the samples examined during such period; violations of the fecal coliform standard are expected during rainfall events and, in some cases, this violation is expected to be caused by uncontrollable nonpoint source pollution; all coliform concentrations are to be analyzed using the membrane filter technique unless high turbidity or other adverse conditions necessitate the tube dilution method; in case of controversy over results, the MPN 5-tube dilution technique will be used as the reference method;
- (F) Oils; deleterious substances; colored or other wastes: only such amounts as will not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses; for the purpose of implementing this Rule, oils, deleterious substances, colored or other wastes will include but not be limited to substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.4(a)-(b);
- (G) pH: shall be normal for the waters in the area, which generally shall range between 6.0 and 9.0 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;
- (H) Phenolic compounds: only such levels as will not result in fish-flesh tainting or impairment of other best usage;
- (I) Radioactive substances:
- (i) Combined radium-226 and radium-228: the maximum average annual activity level (based on at least four samples collected quarterly) for combined radium-226 and radium-228 shall not exceed five picoCuries per liter;
  - (ii) Alpha Emitters: the average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;
  - (iii) Beta Emitters: the maximum average annual activity level (based on at least four samples, collected quarterly) for strontium-90 shall not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radio-nuclides) exceed 50 picoCuries per liter; nor shall the maximum average annual activity level for tritium exceed 20,000 picoCuries per liter;
- (J) Temperature: not to exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and in no case to exceed 29 degrees C (84.2 degrees F) for mountain and upper piedmont waters and 32 degrees C (89.6 degrees F) for lower piedmont and coastal plain waters. The temperature for trout waters shall not be increased by more than 0.5 degrees C (0.9 degrees F) due to the discharge of heated liquids, but in no case to exceed 20 degrees C (68 degrees F);
- (K) Turbidity: the turbidity in the receiving water will not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity will not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level cannot be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202(6) of this Section] recommended by the Designated Non-point Source Agency [as defined by ~~Rule .0202(12)~~ Rule .0202(15) of this Section]. BMPs must be in full compliance with all specifications governing the proper design,

installation, operation and maintenance of such BMPs;

(L) Toxic substances: numerical water quality standards (maximum permissible levels) to protect aquatic life applicable to all fresh surface waters:

- (i) Arsenic: 50 ug/l;
- (ii) Beryllium: 6.5 ug/l;
- (iii) Cadmium: 0.4 ug/l for trout waters and 2.0 ug/l for non-trout waters;
- (iv) Chlorine, total residual: 17 ug/l for trout waters (Tr); (Action Level of 17 ug/l for all waters not classified as trout waters (Tr); see Paragraph (b)(4) of this Rule);
- (v) Chromium, total recoverable: 50 ug/l;
- (vi) Cyanide: 5.0 ug/l;
- (vii) Fluorides: 1.8 mg/l;
- (viii) Lead, total recoverable: 25 ug/l; collection of data on sources, transport and fate of lead will be required as part of the toxicity reduction evaluation for dischargers that are out of compliance with whole effluent toxicity testing requirements and the concentration of lead in the effluent is concomitantly determined to exceed an instream level of 3.1 ug/l from the discharge;

(ix) MBAS (Methylene-Blue Active Substances): 0.5 mg/l;

(x) Mercury: 0.012 ug/l;

(xi) Nickel: 88 ug/l;

(xii) Pesticides:

- (I) Aldrin: 0.002 ug/l;
- (II) Chlordane: 0.004 ug/l;
- (III) DDT: 0.001 ug/l;
- (IV) Demeton: 0.1 ug/l;
- (V) Dieldrin: 0.002 ug/l;
- (VI) Endosulfan: 0.05 ug/l;
- (VII) Endrin: 0.002 ug/l;
- (VIII) Guthion: 0.01 ug/l;
- (IX) Heptachlor: 0.004 ug/l;
- (X) Lindane: 0.01 ug/l;
- (XI) Methoxychlor: 0.03 ug/l;
- (XII) Mirex: 0.001 ug/l;
- (XIII) Parathion: 0.013 ug/l;
- (XIV) Toxaphene: 0.0002 ug/l;

(xiii) Polychlorinated biphenyls: 0.001 ug/l;

(xiv) Selenium: 5 ug/l;

(xv) Toluene: 11 ug/l or 0.36 ug/l in trout waters;

(xvi) Trialkyltin compounds: 0.008 ug/l expressed as tributyltin.

(4) Action Levels for Toxic Substances: if the Action Levels for any of the substances listed in this Subparagraph (which are

generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics and/or associated waste characteristics) are determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified low flow criterion for toxic substances (Rule .0206 in this Section), the discharger will be required to monitor the chemical and/or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which Action Levels are listed in this Subparagraph will be limited as appropriate in the NPDES permit based on the Action Levels listed in this Subparagraph if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the Action Level parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances may be a significant causative factor resulting in toxicity of the effluent;

(A) Copper: 7 ug/l;

(B) Iron: 1.0 mg/l;

(C) Silver: 0.06 ug/l;

(D) Zinc: 50 ug/l;

(E) Chloride: 230 mg/l;

(F) Chlorine, total residual: 17 ug/l in all waters except trout waters (Tr); [a standard of 17 ug/l exists for waters classified as trout waters and is applicable as such to all dischargers to trout waters; see Paragraph (b)(3)(L)(iv) of this Section];

For purposes other than consideration of NPDES permitting of point source discharges as described in this Subparagraph, the Action Levels in this Rule, as measured by an appropriate analytical technique, will be considered as numerical ambient water quality standards.

(c) Class WS-1 Waters.

(1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection of their water supplies, and any best usage specified for Class C waters;

(2) Conditions Related to the Best Usage. Waters of this class are protected water supplies within natural and uninhabited uninhabited or predominantly undeveloped (not urbanized) watersheds with no permitted point source dischargers except those existing discharges qualifying for a

General Permit according to the requirements of 15A NCAC 2H .0131 specifically approved by the Commission at the time of classification; waters within this class must be relatively unimpacted by non-point sources of pollution; local land use management programs are required to protect waters from nonpoint source pollution; watersheds must be protected and the waters, following treatment required by the Division of Health Services, will meet the maximum contaminant levels considered safe for drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, ~~40 NCAC 10D .1600~~; 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;

(3) Quality Standards Applicable to Class WS-I Waters:

- (A) Nonpoint Source Pollution: only that pollution which will not adversely impact the waters for use as a water supply or any other designated use;
- (B) Organisms of coliform group: total coliforms not to exceed 50/100 ml (MF count) as a monthly geometric mean value in watersheds serving as unfiltered water supplies;
- (C) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
- (D) Sewage, industrial wastes: none except those specified in Subparagraph (2) of this Paragraph;
- (E) Solids, total dissolved: not greater than 500 mg/l;
- (F) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (G) Toxic and other deleterious substances:
  - (i) Water quality standards (maximum permissible levels) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-I waters:
    - (I) Barium: 1.0 mg/l;
    - (II) Chloride: 250 mg/l;
    - (III) Manganese: 50 ug/l;
    - (IV) Nickel: 25 ug/l;
    - (V) Nitrate nitrogen: 10.0 mg/l;
    - (VI) 2,4-D: 100 ug/l;
    - (VII) 2,4,5-TP (Silvex): 10 ug/l;

(VIII) Sulfates: 250 mg/l.

(ii) Water quality standards (maximum permissible levels) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-I waters:

- (I) Beryllium: 6.8 ng/l;
- (II) Benzene: 1.19 ug/l;
- (III) Carbon tetrachloride: 0.254 ug/l;
- (IV) Chlorinated benzenes: 488 ug/l;
- (V) Dioxin: 0.000013 ng/l;
- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l.

(d) Class WS-II Waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection for their water supplies where a WS-I classification is not attainable and any best usage specified for Class C waters; this classification may also be used to protect critical portions of the watershed of Class WS-III waters;
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are in low to moderately developed (urbanized) watersheds; only domestic wastewater discharges (excluding municipal dischargers required to have a pretreatment program according to 15A NCAC 2H .0904) and industrial non-process discharges specifically approved by the EMC are permitted in these watersheds; local governments must have land use management programs to protect these watersheds from pollution due to land development and other nonpoint sources; the waters, following treatment required by the Division of Health Services, will meet the maximum contaminant levels considered safe for drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, ~~40 NCAC 10D .1600~~; 15A NCAC 18C .1500; sources of water pol-

lution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;

(3) Quality Standards Applicable to Class WS-II Waters:

(A) Industrial Wastes: none except for non-process industrial discharges specifically approved by the Commission;

(B) Nonpoint Source Pollution: only that pollution which will not adversely impact the waters for use as a water supply or any other designated use;

(C) Odor producing substances contained in sewage or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;

(D) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;

(E) Sewage: none which will have an adverse effect on human health or is not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Health Services, North Carolina Department of Human Resources;

(F) Total hardness: not greater than 100 mg/l as calcium carbonate;

(G) Total dissolved solids: not greater than 500 mg/l;

(H) Toxic and other deleterious substances:

(i) Water quality standards (maximum permissible levels) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-II waters:

- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 200 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10.0 mg/l;
- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP: 10 ug/l;
- (VIII) Sulfates: 250.0 mg/l.

(ii) Water quality standards (maximum permissible levels) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-II waters:

- (I) Beryllium: 6.8 ng l;

- (II) Benzene: 1.19 ug/l;
- (III) Carbon tetrachloride: 0.254 ug/l;
- (IV) Chlorinated benzenes: 488 ug/l;
- (V) Dioxin: 0.000013 ng/l;
- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l.

(e) Class WS-III Waters.

(1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users where more protected sources are not feasible and any other best usage specified for Class C waters;

(2) Conditions Related to Best Usage. The waters, after treatment required by the Division of Health Services, will meet the maximum contaminant levels considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, ~~10 NCAC 10D .1600~~, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;

(3) Quality Standards Applicable to Class WS-III Waters:

(A) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;

(B) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;

- (C) Sewage, industrial wastes, or other wastes: none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Health Services, North Carolina Department of Human Resources; any discharger or industrial users subject to pretreatment standards may be required upon request by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies classified WS-III; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
- (D) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (E) Total dissolved solids: not greater than 500 mg/l;
- (F) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible levels) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-III waters:
    - (I) Barium: 1.0 mg/l;
    - (II) Chloride: 250 mg/l;
    - (III) Manganese: 200 ug/l;
    - (IV) Nickel: 25 ug/l;
    - (V) Nitrate nitrogen: 10.0 mg/l;
    - (VI) 2,4-D: 100 ug/l;
    - (VII) 2,4,5-TP (Silvex): 10 ug/l;
    - (VIII) Sulfates: 250.0 mg/l.
  - (ii) Water quality standards (maximum permissible levels) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-III waters:
    - (I) Beryllium: 6.8 ng/l;
    - (II) Benzene: 1.19 ug/l;
    - (III) Carbon tetrachloride: 0.254 ug/l;
    - (IV) Chlorinated benzenes: 488 ug/l;
    - (V) Dioxin: 0.000013 ng/l;
    - (VI) Hexachlorobutadiene: 0.445 ug/l;
    - (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
    - (VIII) Tetrachloroethane (I,1,2,2): 0.172 ug/l;
    - (IX) Tetrachloroethylene: 0.8 ug/l;
    - (X) Trichloroethylene: 3.08 ug/l;
    - (XI) Vinyl Chloride: 2 ug/l;
    - (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l.
- (f) Class B Waters.
- (1) Best Usage of Waters. Primary recreation and any other best usage specified by the "C" classification;
  - (2) Conditions Related to Best Usage. The waters will meet accepted standards of water quality for outdoor bathing places and will be of sufficient size and depth for primary recreation purposes. Sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;
  - (3) Quality standards applicable to Class B waters:
    - (A) Sewage, industrial wastes, or other wastes: none which are not effectively treated to the satisfaction of the Commission; in determining the degree of treatment required for such waste when discharged into waters to be used for bathing, the Commission will consider the quality and quantity of the sewage and wastes involved and the proximity of such discharges to waters in this class; discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste can not be reliably treated to ensure the protection of primary recreation;
    - (B) Organisms of coliform group: fecal coliforms not to exceed geometric mean of 200/100 ml (MF count) based on at least five consecutive samples examined during any 30-day period and not to exceed 400/100 ml in more than 20 percent of the samples examined during such period.

*Statutory Authority*      *G.S.*      *143-214.1;*  
*143-215.3(a)(1).*

- .0212 TIDAL SALT WATER CLASSIFICATIONS AND STANDARDS**
- (a) General. The water quality standards for all tidal salt waters are the basic standards applicable to Class SC waters. Additional and more stringent standards applicable to other specific tidal salt water classifications are specified in Paragraphs (c) and (d) of this Rule.
- (b) All tidal salt waters (Class SC).
- (1) Best Usage of Waters. Aquatic life propagation and maintenance of biological integrity (including fishing, fish and

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- functioning PNAs), wildlife, secondary recreation, and any other usage except primary recreation or shellfishing for market purposes;
- (2) Conditions Related to Best Usage. The waters will be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, and secondary recreation; Any source of water pollution which precludes any of these uses, including their functioning as PNAs, on either a short-term or a long-term basis will be considered to be violating a water quality standard;
- (3) Quality standards applicable to all tidal salt waters:
- (A) Chlorophyll a (corrected): not greater than 40 ug/l in sounds, estuaries, and other slow-moving waters; the Commission or its designee may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired.
- (B) Dissolved oxygen: not less than 5.0 mg/l, except that swamp waters, poorly flushed tidally influenced streams or embayments, or estuarine bottom waters may have lower values if caused by natural conditions;
- (C) Floating solids; settleable solids; sludge deposits: only such amounts attributable to sewage, industrial wastes or other wastes, as will not make the waters unsafe or unsuitable for aquatic life and wildlife, or impair the waters for any designated uses;
- (D) Gases, total dissolved: not greater than 110 percent of saturation;
- (E) Organisms of coliform group: fecal coliforms not to exceed geometric mean of 200/100 ml (MF count) based upon at least five consecutive samples examined during any 30 day period; not to exceed 400/100 ml in more than 20 percent of the samples examined during such period; violations of the fecal coliform standard are expected during rainfall events and, in some cases, this violation is expected to be caused by uncontrollable nonpoint source pollution; all coliform concentrations are to be analyzed using the MF technique unless high turbidity or other adverse conditions necessitate the tube dilution method; in case of controversy over results the MPN 5-tube dilution method will be used as the referee method;
- (F) Oils; deleterious substances; colored or other wastes: only such amounts as will not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses; for the purpose of implementing this Rule, oils, deleterious substances, colored or other wastes will include but not be limited to substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.4(a)-(b).
- (G) pH: will be normal for the waters in the area, which generally will range between 6.8 and 8.5 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;
- (H) Phenolic compounds: only such levels as will not result in fish-flesh tainting or impairment of other best usage;
- (I) Radioactive substances:
- (i) Combined radium-226 and radium-228: The maximum average annual activity level (based on at least four samples, collected quarterly) for combined radium-226, and radium-228 will not exceed five picoCuries per liter;
- (ii) Alpha Emitters. The average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) will not exceed 15 picoCuries per liter;
- (iii) Beta Emitters. The maximum average annual activity level (based on at least four samples, collected quarterly) for strontium-90 will not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radio-nuclides) exceed 50 picoCuries per liter; nor will the maximum average annual activity level for tritium exceed 20,000 picoCuries per liter;
- (J) Salinity: will not be appreciably modified as a result of hydrological modifications in areas draining to PNAs; projects which are determined by the Director to result in the appreciable modification of salinity within a PNA will be required to employ appropriate water management practices;

- (K) Temperature: will not be increased above the natural water temperature by more than 0.8 degrees C (1.44 degrees F) during the months of June, July, and August nor more than 2.2 degrees C (3.96 degrees F) during other months and in no cases to exceed 32 degrees C (89.6 degrees F) due to the discharge of heated liquids;
- (L) Turbidity: the turbidity in the receiving water will not exceed 25 NTU; if turbidity exceeds this level due to natural background conditions, the existing turbidity level cannot be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202(6) of this Section] recommended by the Designated Non-point Source Agency [as defined by ~~Rule .0202(12)~~ ~~Rule .0202(15)~~ of this Section]. BMPs must be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such BMPs;
- (M) Toxic substances: numerical water quality standards (maximum permissible levels) to protect aquatic life applicable to all tidal saltwaters:
- (i) Arsenic, total recoverable: 50 ug/l;
  - (ii) Cadmium: 5.0 ug/l;
  - (iii) Chromium, total: 20 ug/l;
  - (iv) Cyanide: 1.0 ug/l;
  - (v) Mercury: 0.025 ug/l;
  - (vi) Lead, total recoverable: 25 ug/l; collection of data on sources, transport and fate of lead will be required as part of the toxicity reduction evaluation for dischargers that are out of compliance with whole effluent toxicity testing requirements and the concentration of lead in the effluent is concomitantly determined to exceed an instream level of 3.1 ug/l from the discharge;
  - (vii) Nickel: 8.3 ug/l;
  - (viii) Pesticides:
    - (I) Aldrin: 0.003 ug/l;
    - (II) Chlordane: 0.004 ug/l;
    - (III) DDT: 0.001 ug/l;
    - (IV) Demeton: 0.1 ug/l;
    - (V) Dieldrin: 0.002 ug/l;
    - (VI) Endosulfan: 0.009 ug/l;
    - (VII) Endrin: 0.002 ug/l;
    - (VIII) Guthion: 0.01 ug/l;
    - (IX) Heptachlor: 0.004 ug/l;
    - (X) Lindane: 0.004 ug/l;
    - (XI) Methoxychlor: 0.03 ug/l;
    - (XII) Mirex: 0.001 ug/l;
    - (XIII) Parathion: 0.178 ug/l;
- (XIV) Toxaphene: 0.0002 ug/l.
- (ix) Polychlorinated biphenyls: 0.001 ug/l;
- (x) Selenium: 71 ug/l;
- (xi) Trialkyltin compounds: 0.002 ug/l expressed as tributyltin.
- (4) Action Levels for Toxic Substances: if the Action Levels for any of the substances listed in this Subparagraph (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics and/or associated waste characteristics) are determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified low flow criterion for toxic substances (Rule .0206 in this Section), the discharger will be required to monitor the chemical and/or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which Action Levels are listed in this Subparagraph may be limited as appropriate in the NPDES permit if sufficient information exists to indicate that any of those substances may be a significant causative factor resulting in toxicity of the effluent.
- (A) Copper: 3 ug/l;
  - (B) Silver: 0.1 ug/l;
  - (C) Zinc: 86 ug/l.
- (c) Class SA Waters.
- (1) Best Usage of Waters. Shellfishing for market purposes and any other usage specified by the "SB" or "SC" classification;
  - (2) Conditions Related to Best Usage. Waters will meet the current sanitary and bacteriological standards as adopted by the Commission for Health Services and will be suitable for shellfish culture; any source of water pollution which precludes any of these uses, including their functioning as PNAs, on either a short-term or a long-term basis will be considered to be violating a water quality standard;
  - (3) Quality Standards applicable to Class SA Waters:
    - (A) Floating solids; settleable solids; sludge deposits: none attributable to sewage, industrial wastes or other wastes;
    - (B) Sewage: none;
    - (C) Industrial wastes, or other wastes: none which are not effectively treated to the satisfaction of the Commission in ac-

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cordance with the requirements of the Division of Health Services;

(D) Organisms of coliform group: fecal coliform group not to exceed a median MF of 14/100 ml and not more than 10 percent of the samples shall exceed an MF count of 43/100 ml in those areas most probably exposed to fecal contamination during the most unfavorable hydrographic and pollution conditions.

(d) Class SB Waters.

(1) Best Usage of Waters. Primary recreation and any other usage specified by the "SC" classification;

(2) Conditions Related to Best Usage. The waters will meet accepted sanitary standards of water quality for outdoor bathing places and will be of sufficient size and depth for primary recreation purposes; any source of water pollution which precludes any of these uses, including their functioning as PNAs, on either a short-term or a long-term basis will be considered to be violating a water quality standard;

(3) Quality Standards applicable to Class SB waters:

(A) Floating solids; settleable solids; sludge deposits: none attributable to sewage, industrial wastes or other wastes;

(B) Sewage; industrial wastes; or other wastes: none which are not effectively treated to the satisfaction of the Commission; in determining the degree of treatment required for such waters discharged into waters which are to be used for bathing, the Commission will take into consideration quantity and quality of the sewage and other wastes involved and the proximity of such discharges to the waters in this class; discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste can not be treated to ensure the protection of primary recreation;

(C) Organisms of coliform group: fecal coliforms not to exceed a geometric mean of 200/100 ml (MF count) based on at least five consecutive samples examined during any 30 day period and not to exceed 400/100 ml in more than 20 percent of the samples examined during such period.

*Statutory Authority G.S. 143-214.1;  
143-215.3(a)(1).*

### **.0216 OUTSTANDING RESOURCE WATERS**

(a) General. In addition to the existing classifications, the Commission may classify certain unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

(1) there are no significant impacts from pollution with the water quality rated as excellent based on physical, chemical and/or biological information;

(2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values. In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

(1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;

(2) there is an unusually high level of water-based recreation or the potential for such recreation;

(3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters, National Wildlife Refuge, etc, which do not provide any water quality protection;

(4) the waters represent an important component of a state or national park or forest; or

(5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW.

(1) Freshwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values will be developed on a site specific basis during the proceedings to classify waters as ORW. At a minimum, no new discharges or expansions of existing discharges will be permitted, and stormwater controls for all new development activities requiring a Sediment Erosion Control Plan an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and

sedimentation control program, will be required to control stormwater runoff as follows:

- (A) Low Density Option: Developments which limit single family developments to one acre lots and other type developments to 12 percent built-upon area, have no stormwater collection system as defined in 15A NCAC 2H .1002(13), and have built-upon areas at least 30 feet from surface water areas will be deemed to comply with this requirement, unless it is determined that additional runoff control measures are required to protect the water quality of Outstanding Resource Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case-by-case basis.
- (B) High Density Development: Higher density developments will be allowed if stormwater control systems utilizing wet detention ponds as described in 15A NCAC 2H .1003(i), (k) and (l) are installed, operated and maintained which control the runoff from all built-upon areas generated from one inch of rainfall, unless it is determined that additional runoff control measures are required to protect the water quality of Outstanding Resource Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case-by-case basis. The size of the control system must take into account the runoff from any pervious surfaces draining to the system.

~~More stringent requirements may be required by the Environmental Management Commission on a site specific basis.~~

- (2) Saltwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values will be developed on a site-specific basis during the proceedings to classify waters as ORW. At a minimum, new development will comply with the low density options as specified in the Stormwater Runoff Disposal rules [46 NCAC 2H .1003(a)(2)] [15A NCAC 2H .1003(a)(2)] within 575 feet of the mean high water line of the designated ORW area. New non-discharge permits will be required to meet reduced loading rates and increased buffer zones, to be

determined on a case-by-case basis. No dredge or fill activities will be allowed where significant shellfish or submerged aquatic vegetation bed resources occur, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values will be considered on a site specific basis during the proceedings to classify waters as ORW and will be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the Commission. The Commission will also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 2B .0302 through .0317) as specified for the appropriate river basin and will also be described on maps maintained by the Division of Environmental Management.

(d) Petition Process. Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee will initiate public proceedings to classify waters as ORW or will inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition should be sent to:

Director  
DEHNR/Division of Environmental  
Management  
P.O. Box 27687 29535  
Raleigh, North Carolina 27611-7687  
27626-0535

The envelope containing the petition should clearly bear the notation: RULE-MAKING PETITION FOR ORW CLASSIFICATION.

(e) Listing of Waters Classified ORW with Specific Actions. Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and

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- 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area will have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1003(a)(2) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesigned waterbodies that are tributary to ORW designated segments shall comply with Rule .0216(c) of this Section in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments will be allowed if there is no increase in pollutant loading:
- (A) North and South Fowler Creeks,
  - (B) Green and Norton Mill Creeks,
  - (C) Cane Creek,
  - (D) Ammons Branch,
  - (E) Glade Creek, and
  - (F) Associated tributaries.
- (3) Henry Fork ORW Area (Catawba River Basin): the following undesigned waterbodies that are tributary to ORW designated segments shall comply with Rule .0216(c) of this Section in order to protect the designated waters as per Rule .0203 of this Section:
- (A) Ivy Creek,
  - (B) Rock Creek, and
  - (C) Associated tributaries.
- (4) In the following designated waterbodies, no additional restrictions will be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that will be allowed will be non-domestic, non-process industrial discharges.
- (A) The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.
  - (5) In the Following designated waterbodies, the only type of new or expanded marina that will be allowed will be those marinas located in upland basin areas. The only new or expanded NPDES permitted discharges that will be allowed will be non-domestic, non-process industrial discharges.
- (A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35° 23' 51" and Long. 76° 21' 02" thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.
  - (B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.
  - (C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including all waters of Core Sound and its tributaries but excluding Nelson Bay, the Atlantic Harbor Restricted Area and those tributaries of Jarrett Bay that are closed to shellfishing.
  - (D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.
  - (E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.
  - (F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intra-

- coastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.
- (6) In the following designated waterbodies, no new or expanded NPDES permitted discharges and no new or expanded marinas will be allowed.
- (A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35° 23' 51" and Long. 76° 21' 02" thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.
- (B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.
- (C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.
- (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.

*Statutory Authority G.S. 143-214.1.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the DEM-Groundwater Section intends to adopt rule(s) cited as 15A NCAC 2P .0101 - .0103, .0201 - .0202, .0301 - .0302, .0401 - .0407.*

*The proposed effective date of this action is November 1, 1992.*

*The public hearing will be conducted on the following dates and locations:*

NEW BERN

*July 7, 1992*

*7:00 p.m.*

*Superior Court, 2nd Floor  
Craven County Courthouse*

RALEIGH

*July 9, 1992*

*7:00 p.m.*

*Ground Floor Hearing Room  
Archdale Building  
512 N. Salisbury Street*

HICKORY

*July 13, 1992*

*7:00 p.m.*

*Auditorium  
Catawba Valley  
Community College*

*Reason for Proposed Action: The proposed rules enable the operation of the commercial and non-commercial leaking petroleum underground storage tank cleanup funds. The rules set forth conditions and procedures for reimbursement of cost for environmental damage cleanup, bodily injury, or property damage resulting from the release of petroleum from an underground storage tank. Rules for the collection of annual fees are also included.*

*Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted through July 15, 1992. Please submit comments to Mr. David Hance, Division of Environmental Management, Groundwater Section, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-3221. Please notify Mr. Hance prior to the public hearing if you desire*

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to speak. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing.

**IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE DEPARTMENT THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES.**

**Fiscal Note:** These Rules affect the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on May 6, 1992, OSBM on May 6, 1992, N.C. League of Municipalities on May 7, 1992, and N.C. Association of County Commissioners on May 7, 1992.

### **SUBCHAPTER 2P - LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUNDS**

#### **SECTION .0100 - GENERAL CONSIDERATIONS**

##### **.0101 GENERAL**

(a) The purpose of this Subchapter is to establish criteria and procedures for the reimbursement of costs incurred by owners and operators from the Leaking Petroleum Underground Storage Tank Cleanup Funds.

(b) The Groundwater Section of the Division of Environmental Management of the Department of Environment, Health, and Natural Resources shall administer the Commercial and Noncommercial Underground Storage Tank Cleanup Funds for the State of North Carolina.

(c) Staff of the Division of Environmental Management shall conduct inspections and review records as necessary to assure compliance with this Subchapter.

(d) As authorized by G.S. 143-215.94G, the Department may engage in cleanup work it deems appropriate and pay the costs from the Noncommercial Fund in accordance with G.S. 143-215.94D.

(e) The Department may engage in investigations and cleanups in accordance with a priority ranking system and the availability of resources as determined by the Division.

*Statutory Authority G.S. 143-215.94E; 143-215.94G; 143-215.94L.*

##### **.0102 COPIES OF RULES INCORPORATED BY REFERENCE**

(a) Copies of applicable sections of Subchapter 2N of Title 15A, North Carolina Administrative Code incorporated by reference in this Subchapter, including any subsequent amendments and editions, are available for public inspection at Department of Environment, Health, and Natural Resources Regional Offices. They are:

- (1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina 28801;
  - (2) Winston-Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston-Salem, North Carolina 27106;
  - (3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;
  - (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;
  - (5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;
  - (6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;
  - (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.
- (b) Copies of such regulations can be made at these regional offices for ten cents (\$0.10) per page.

*Statutory Authority G.S. 12-3.1(c); 143-215.94E; 143-215.94L.*

##### **.0103 FALSE OR MISLEADING INFORMATION**

Any owner or operator or authorized agent who knowingly submits any false or misleading information with regard to these Rules may be considered to be contributing to a discharge, interfering with the mitigation of a discharge, or preventing the early detection of a discharge pursuant to G.S. 143-215.94E(g)(1) if the false or misleading information results in delay of any efforts to stop the release or discharge, results in delay of detection of any portion of the discharge or release, or results in delay of investigatory or remedial activities.

*Statutory Authority G.S. 143-215.94E; 143-215.94L.*

#### **SECTION .0200 - PROGRAM SCOPE**

##### **.0201 APPLICABILITY**

(a) This Subchapter shall apply to the disbursement of funds from the Commercial Leak-

ing Petroleum Underground Storage Tank Cleanup Fund and Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund, and to the collection of annual operating fees.

(b) Any portions of this Subchapter which concern annual tank operating fees apply to all owners and operators of Commercial Underground Storage Tanks that have been in use in North Carolina on or after January 1, 1989.

(c) This Subchapter shall apply to discharges or releases from noncommercial or commercial underground storage tank systems, regardless of whether such systems are regulated under Subchapter 2N of Title 15A, of the North Carolina Administrative Code.

Statutory Authority G.S. 143-215.94E; 143-215.94L.

#### .0202 DEFINITIONS

(a) The definitions for "Criteria and Standards Applicable to Underground Storage Tanks" contained in 15A NCAC 2N .0203 are hereby incorporated by reference including subsequent amendments and editions, except that for the purposes of this Subchapter, the definition of "Underground Storage Tank" shall be as defined in Subparagraph (b)(12) of this Rule.

(b) The following terms are defined for use in this Subchapter:

- (1) "Annual operating fee" is an annual fee required to be paid to the Department by the owner or operator of each commercial underground storage tank in use on or after 1 January of the year, beginning with 1989.
- (2) "Commission" means the Environmental Management Commission as organized under Chapter 143B of the General Statutes.
- (3) "Department" means Department of Environment, Health, and Natural Resources.
- (4) "Discovered release" means a release which an owner or operator, or its employee or agent, has been made aware of, has been notified of, or has a reasonable basis for knowing has occurred.
- (5) "Dual usage tank" means an underground storage tank which could be considered both a commercial underground storage tank and a noncommercial underground storage tank and for which both the commercial and the noncommercial usages are integral to the operation or existence of the tank.

(6) "Household" means a permanent structure, whether free-standing or connected to other units, used for living, where primary living space and primary food preparation facilities are controlled or maintained by the residents. "Household" includes single-family houses, apartments, and single living units, whether or not the residents are related to each other. "Household" does not include dormitories, hospitals, hotels, motels, apartment buildings (as distinct from the individual apartments therein), or other multiple dwelling structures. The term "four or fewer households" shall relate to underground storage tanks serving households only.

(7) "Occurrence" means one or more release(s) that result(s) in a single plume of soil, surface water, and/or groundwater contamination (consisting of free product and/or dissolved contaminants exceeding standards specified in 15A NCAC 2L or any other applicable laws, rules or regulations) emanating from a given site.

(8) "Reasonable and necessary expenditures" means expenditures for cleanup work performed in accordance with applicable environmental laws and regulations and which is essential in determining the extent of contamination, in conducting release response or remediation, or which compensates third parties for resulting bodily injury and property damage. The Commission shall consider such expenditures reasonable and necessary to the extent that they are sufficiently documented, are performed in an efficient manner considering comparable costs for labor, equipment, and materials, and utilize cost-efficient methods.

(9) "Substantive law, rule, or regulation" shall mean any law, rule, or regulation requiring an owner or operator to perform any act necessary and essential in preventing discharges or releases, in facilitating their early detection, and in mitigating the impact of discharges or releases.

(10) "Tank in operation" means an underground storage tank into which product is added or from which product is removed for purposes other than closure.

(11) "Tank in use" means an underground storage tank intended for the containment or dispensing of petroleum product.

(12) "Underground storage tank", as used in this Subchapter means any Commercial or Noncommercial Underground Storage

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Tank as defined in G.S. 143-215.94A. A dual usage tank is considered to be a Commercial underground storage tank.

Statutory Authority G.S. 143-215.94E; 143-215.94L.

### **SECTION .0300 - ANNUAL OPERATING FEES**

#### **.0301 FEES AND PAYMENT**

(a) The owner or operator of each commercial underground storage tank shall pay all annual tank operating fees due for that underground storage tank.

(b) The Division shall send an invoice, for the amount of the annual operating fees due, to the owner or operator of any commercial petroleum underground storage tank in use on January 1 of the year and which has been registered with the Department. The annual operating fee shall be due and payable 30 days following the date of the invoice and shall be submitted to the Division accordingly.

(c) Any owner or operator not receiving an invoice for annual operating fees shall still pay any fees due according to the following schedule:

(1) If the owner or operator has paid annual operating fees for the subject tank in previous years, the payment will be submitted to the Division within 30 days of the anniversary of the last invoicing date for the fees.

(2) If the owner or operator has not previously paid annual operating fees for the subject tank, any annual operating fee is due on 1 January of that year and shall be submitted to the Division accordingly.

(d) Any commercial underground storage tank (except commercial underground storage tanks not regulated under 15A NCAC 2N) which was in operation on or after December 22, 1988 and has not been permanently closed in accordance with 15A NCAC 2N .0800 is considered to be in use.

(e) Any annual operating fee due on or after January 1, 1992, that is not paid within 30 days of the due date shall be subject to a late penalty of five dollars (\$5.00) per day up to an amount equal to the original fee. The late penalty will be assessed based on the date of receipt of fee payment by the Division.

(f) All annual operating fees due for any year are assessed in accordance with the schedule of fees in effect during that year. Payment of fees due for a prior year will be at the rate in effect during that prior year. It is the responsibility of the owner or operator to determine that all fees

have been paid in accordance with Paragraph (a) of this Rule.

(g) In the event that an annual operating fee was paid for a tank for which a fee was not required, a refund of that fee payment may be requested by the owner or operator. The owner or operator must provide adequate documentation that the tank was exempt from the requirement to pay the annual operating fee.

Statutory Authority G.S. 143-215.94E; 143-215.94L.

#### **.0302 NOTIFICATION**

Any person transferring ownership of a commercial underground storage tank shall provide written notification to the Division of this action within 30 days of the date of transfer. This notification must indicate the following:

- (1) Name and address of the previous owner and the new owner;
- (2) Name, identification number, and street address of the facility;
- (3) Date of transfer;
- (4) Signatures of the transferring owner and the new owner or their authorized representatives.

Statutory Authority G.S. 143-215.94L; 143-215.94T.

### **SECTION .0400 - REIMBURSEMENT PROCEDURE**

#### **.0401 ELIGIBILITY OF OWNER OR OPERATOR**

##### **(a) Date of Release:**

(1) An owner or operator of a commercial underground storage tank is not eligible for reimbursement for costs related to releases which were discovered prior to June 30, 1988.

(2) An owner or operator of a noncommercial underground storage tank is eligible for reimbursement for costs without regard to the date a release is discovered.

(3) An owner or operator of a commercial underground storage tank, from which a release is discovered on or after July 3, 1991, is not eligible for reimbursement if the tank had been removed from the ground more than 120 days prior to the date of discovery of the release.

(b) An owner or operator of a commercial underground storage tank is not eligible for reimbursement for costs related to releases if any annual operating fees due have not been paid in accordance with Rule .0301 of this Subchapter prior to discovery.

(c) An owner or operator of a commercial or noncommercial underground storage tank is not eligible for reimbursement of any expended costs which are in excess of the amount determined reasonable in accordance with Rule .0402, and which are not necessary in performing cleanup of environmental damage and in compensating third parties for bodily injury and property damage, and which are less than any deductible established for the appropriate fund.

(d) An owner or operator of a commercial or noncommercial underground storage tank may be reimbursed for eligible costs only after submittal of a written application to the Division, on forms provided by the Division, and which includes any information and documentation necessary to determine eligibility and to determine that any expended costs are reasonable and necessary.

(e) An owner or operator of a commercial or noncommercial underground storage tank shall not be eligible for reimbursement for costs related to releases if the owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks intended to prevent, mitigate, or facilitate the early detection of discharges or releases.

(f) The release response and corrective action requirements of any rules of the Commission and of any statute administered by the Department shall not in any way be construed as limited by, or contingent upon, any reimbursement from either the Noncommercial Fund or the Commercial Fund.

*Statutory Authority G.S. 143-215.94E; 143-215.94L.*

#### **.0402 CLEANUP COSTS**

(a) In determining whether costs expended by an owner or operator are reasonable and necessary, the Division shall consider the following:

(1) Adequacy and cost-effectiveness of any work performed and technical activity utilized by the owner or operator in performing release response, site assessment and corrective action.

(2) Typical billing rates of engineering, geological, or other environmental consulting firms providing similar services in the State as determined by the Division.

(3) Typical rental rates for any necessary equipment as determined by the Division. The amount reimbursed for equipment rental shall not exceed the typical purchase price of such equipment.

(4) Typical costs or rates of any other necessary service, labor or expense as determined by the Division.

(b) Expenditures not eligible for reimbursement shall include the following:

- (1) Costs of the removal and disposal of noncommercial underground storage tanks and contents removed on or after July 3, 1991, and of commercial underground storage tanks and contents removed on or after January 1, 1992;
- (2) Costs of the replacement of any underground storage tank, piping, fitting, or ancillary equipment;
- (3) Costs incurred in preparation of any proposals to perform work for environmental cleanup;
- (4) Interest on any accounts, loans, etc.;
- (5) Expenses charged by the owner or operator in the processing and management of a reimbursement application or subsequent claims;
- (6) Attorney's fees;
- (7) Penalties, fees, and fines assessed by any court or agency;
- (8) Loss of profits, fees, and wages incurred by the owner or operator;
- (9) Any other expenses not specifically related to environmental cleanup, or implementation of a cost effective environmental cleanup, or third party bodily injury or property damage.

*Statutory Authority G.S. 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94L.*

#### **.0403 THIRD PARTY CLAIMS**

(a) An owner or operator seeking reimbursement from the appropriate fund for any third party claim for bodily injury or property damage must notify the Division of any such claim. The owner or operator must provide the Division with all pleadings and other related documents if a lawsuit has been filed. The owner or operator shall provide to the Division copies of any medical reports, statements, investigative reports, or certifications from licensed professionals necessary to determine that a claim for bodily injury or property damage is reasonable and necessary.

(b) The term third party bodily injury means specific physical bodily injury proximately resulting from exposure, explosion, or fire caused by the presence of a petroleum release and which is incurred by a person other than the owner or operator, or employees or agents of an owner or operator.

(c) The term third party property damage means actual physical damage or damage due to

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specific loss of normal use of property owned by a person other than the owner or operator of an underground storage tank from which a release has occurred. A property owner shall not be considered a third party if the property was transferred by the owner or operator of an underground storage tank in anticipation of damage due to a release. Third party property damage shall be reimbursed from the appropriate fund based on the rental costs of comparable property during the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is actually destroyed as a result of a petroleum release, reimbursement shall be at an amount necessary to replace or repair the destroyed property.

*Statutory Authority G.S. 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94L.*

### .0404 REQUESTS FOR REIMBURSEMENT

(a) An application for reimbursement must be made on a form provided by the Division. The application form must accompany the initial reimbursement request.

(b) A request for reimbursement shall include copies of any documentation required by the Division to determine that expended costs are reasonable and necessary. Proof of payment must accompany any request for reimbursement, except when reimbursement will be made jointly to the owner or operator and either a provider of service or a third party claimant. The Division may require the owner or operator to submit any information required for the purpose of substantiating any claim for reimbursement on forms provided by the Division.

(c) A request for reimbursement may be returned or additional information requested by the Division, if it is found to be incomplete.

(d) The Division shall reimburse an owner or operator for expenses following completion of any significant phase of cleanup work or in accordance with the schedule allowed by G.S. 143-215.94E(e).

(e) If any amount approved for reimbursement is less than the amount of reimbursement requested, the Division shall issue a written explanation of why the amount requested was not approved.

*Statutory Authority G.S. 143-215.94E; 143-215.94L.*

### .0405 METHOD OF REIMBURSEMENT

(a) Reimbursement for cleanup costs shall be made only to an owner or operator of a petro-

leum underground storage tank, or jointly to an owner or operator and a provider of service.

(b) Reimbursement of cleanup costs to the owner or operator shall be made only after proof of payment for such costs has been received by the Division.

(c) Joint reimbursement of cleanup costs shall be made to an owner or operator and a provider of service only upon receipt of a written agreement acknowledged by both parties. Any reimbursement check shall be sent directly to the owner or operator.

(d) Payment of third party claims shall be made to the owner or operator, or jointly to the owner or operator and the third party claimant.

*Statutory Authority G.S. 143-215.94E; 143-215.94L.*

### .0406 REIMBURSEMENT APPORTIONMENT

(a) Where multiple occurrences are addressed in a single cleanup action, expenses will be reimbursed based on apportionment among the occurrences. The method of apportionment will be as follows:

- (1) Expenses related directly to a particular occurrence shall be applied only to that occurrence;
- (2) Expenses that are related to more than one occurrence will be apportioned equally among the occurrences.

(b) Where annual operating fees due have not been paid on all underground storage tanks contributing to an occurrence, reimbursement will be made at a rate equal to the number of tanks contributing to the occurrence for which all annual operating fees due have been paid divided by the total number of tanks contributing to the occurrence.

(c) If multiple underground storage tanks at a single site are contributing to a single occurrence and the tanks are owned or operated by different persons, reimbursement may be made to any of the owners or operators as if the occurrence were caused solely by that person's underground storage tanks.

*Statutory Authority G.S. 143-215.94E; 143-215.94L.*

### .0407 FINAL ACTION

(a) The Director, or his delegate, shall make a final decision on a written application for eligibility for reimbursement from the appropriate fund. The Director, or his delegate, shall make a final decision on any written request for reimbursement made subsequent to an initial application.

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(b) An owner or operator who has been denied eligibility for reimbursement from the appropriate fund after submittal of a written application in accordance with the procedures of this Subchapter, or who has had any written reimbursement request denied after submittal in accordance with the procedures of this Subchapter, shall be notified of the right to petition for a contested case in the Office of Administrative Hearings in accordance with the procedure set out in G.S. 150B-23.

Statutory Authority G.S. 143-215.94E; 143-215.94L.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Marine Fisheries Commission intends to adopt rules cited as 15A NCAC 31 .0013; 3K .0206; 3M .0509; 3O .0211 and amend rules cited as 15A NCAC 31 .0011; 3J .0103, .0107, .0301; 3M .0501, .0504; 3O .0204 - .0205, .0208; 3R .0007 - .0008.*

*The proposed effective date of this action is October 1, 1992.*

*Public hearing dates, time and locations:*

**Note:** Each hearing will be preceded by a public meeting to begin at 7:00 p.m.

**July 1, 1992**

7:30 p.m.

New Hanover County Courthouse  
Room 302  
320 Chestnut Street  
Wilmington, NC

**July 2, 1992**

7:30 p.m.

Carteret Community College  
Joslyn Hall  
Arendell Street  
Morehead City, NC

**July 6, 1992**

7:30 p.m.

Highway Building Auditorium  
#1 Wilmington Street  
(across from Capital)  
Raleigh, NC

**July 7, 1992**

7:30 p.m.

*Beaufort County Courthouse  
District Courtroom  
Washington, NC*

**July 8, 1992**

7:30 p.m.

*Tyrrell County Courthouse  
Main Street  
Columbia, NC*

**July 9, 1992**

7:30 p.m.

*N.C. Aquarium  
Airport Road  
Manteo, NC*

**Business Session:** The Marine Fisheries Commission will conduct a Business Session on July 24, 1992, starting at 8:30 a.m. to decide on these proposed rules. The Marine Fisheries Commission will conduct a workshop on July 23, 1992, starting at 9:00 a.m. If the Workshop concludes early afternoon on the 23rd, the Business Session may start at the conclusion of the workshop, in sequential order, rather than the scheduled order for the morning of the 24th. Both the Workshop and the Business Session will be at the Carolina Power and Light Media Center, Southport, North Carolina.

**Reason for Proposed Action:**

### ADOPTIONS

#### **15A NCAC 3I .0013**

#### **BIOLOGICAL SAMPLING**

To require persons dealing in seafood to allow Division staff to collect biological data. Biological sampling is necessary in order to make management decisions on such issues as size limits and quotas.

#### **15A NCAC 3K .0206**

#### **MECHANICAL HARVEST PERMIT REQUIREMENT**

To require a permit for use of mechanical gear to harvest oysters. Permit will provide data on how many dredges are being used and will allow lease harvesters to exceed daily limit for public bottom harvest.

#### **15A NCAC 3M .0509**

#### **TARPON**

To provide protection to a species that is highly prized by recreational fishermen and is not utilized commercially.

## **PROPOSED RULES**

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### **15A NCAC 3O .0211**

#### **PROTECTION OF PRIVATE SHELLFISH BOTTOM**

*To provide protection of private shellfish bottoms from bottom disturbing gear for propagation of shellfish.*

#### **AMENDMENTS**

### **15A NCAC 3I .0011**

#### **PERMITS FOR AQUACULTURE OPERATIONS**

*To require aquaculture facilities allow for inspections of operations prior to and after issuance of aquaculture operation permit to insure operations are legitimate.*

### **15A NCAC 3J .0103**

#### **GILL NETS, IDENTIFICATION, RESTRICTIONS**

*Mandatory attendance of gill nets will significantly reduce the number of gill nets set and reduce spoilage when water temperatures are warm. Mandatory attendance of gill nets should decrease the mortality rates of undersize fish that are taken by gill nets and decrease recreational and boating conflicts.*

### **15A NCAC 3J .0107**

#### **POUND NETS**

*Limiting the number of pound nets allowed per operation will decrease the number of pound net sets and open up areas for other uses.*

### **15A NCAC 3J .0301**

#### **CRAB, EEL, FISH AND SHRIMP POTS**

*Exempting fish pots from the cleanup period at the end of January into the first week of February will allow fish pots to be fished year-round.*

*Allowing some areas of the Pamlico Sound, Pamlico River and Neuse Rivers which have not been designated for the use of crab pots to be proclaimed open to crab potting will allow potters to use these areas when haulers are not. This will probably increase number of pots being set which may increase conflicts.*

### **15A NCAC 3M .0501**

#### **RED DRUM**

*Prohibiting the sale of red drum over 20 inches will increase the spawning stock and improve the age structure of the red drum populations, thereby building a more stable and viable population.*

### **15A NCAC 3M .0504**

#### **TROUT**

*Proposed amendment will allow for management of spotted seatrout by proclamation. Management is currently accomplished through size limits and proclamation authority for recreational creel lim-*

*its. The Fisheries Director, through proclamation, could relax or impose restrictions on the harvest of spotted seatrout to meet management needs and assure healthy populations.*

### **15A NCAC 3O .0204**

#### **MARKING SHELLFISH LEASES AND FRANCHISES**

*To reduce, through clarification of lease and franchise holders rights, conflicts between the public and shellfish culturists. Should increase the use of public trust resources.*

### **15A NCAC 3O .0205**

#### **LEASE RENEWAL**

*Criteria, as established by G.S. 113-202, does not allow new leases in areas closed because of pollution. Amendment to this rule prohibits renewal of leases which are in polluted areas unless production requirements can be met through relay or other recognized means.*

### **15A NCAC 3O .0208**

#### **CANCELLATION**

*To require initiation of cancellation proceedings for leases where lease holders prohibit public trust use in order to protect public trust rights.*

### **15A NCAC 3R .0007**

#### **DESIGNATED POT AREAS**

*Allowing some areas of the Pamlico Sound, Pamlico River and Neuse Rivers which have not been designated for the use of crab pots to be opened by proclamation to crab potting will allow potters to use these areas that are not being used for haul seining.*

### **15A NCAC 3R .0008**

#### **MECHANICAL METHODS PROHIBITED**

*Clarifies areas where mechanical methods for oystering is prohibited; allows for use of mechanical methods in prohibited areas on private bottom by permit.*

*Comment Procedures: Comments and statements, both written and oral, may be presented at the hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, P.O. Box 769, Morehead City, NC 28557-0769. These written and oral comments must be received no later than July 15, 1992. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearings.*

## **CHAPTER 3 - MARINE FISHERIES**

### **SUBCHAPTER 3I - GENERAL RULES**

#### **.0011 PERMITS FOR AQUACULTURE**

**OPERATIONS**

- (a) It is unlawful to conduct aquaculture operations without first obtaining a permit from the Fisheries Director. Such permit will be issued on a calendar year basis. All aquaculture operations not required to be permitted by the Wildlife Resources Commission must be permitted by the Fisheries Director.
- (b) It is unlawful:
- (1) To take fisheries resources from coastal waters for aquaculture purposes during closed seasons without first obtaining a permit from the Fisheries Director. The Fisheries Director may impose any or all of the following restrictions on the taking of fisheries resources for aquaculture purposes:
    - (A) Specify species,
    - (B) Specify quantity and/or size,
    - (C) Specify time period,
    - (D) Specify location,
    - (E) Specify gear and/or vendors,
    - (F) Specify other conditions as appropriate.
  - (2) To sell, or use for any purpose not related to North Carolina aquacultural operations, fisheries resources taken under a permit issued in accordance with Subparagraph (b)(1) of this Rule.
  - (3) To fail to submit to the Fisheries Director an annual report specifying the amount and disposition of fisheries resources collected under authority of this permit.
  - (4) To refuse to allow agents of the Fisheries Director to inspect proposed or permitted aquaculture operations for compliance with Marine Fisheries rules and permits.
- (c) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 3K .0103 and .0104 are exempt from requirements of this Rule.

*Statutory Authority G.S. 113-134; 113-182; 143B-289.4.*

**.0013 BIOLOGICAL SAMPLING**

It is unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes to refuse to allow the Fisheries Director or his agents to obtain biological data, harvest information, or other statistical data necessary or useful to the conservation and management of marine and estuarine resources from fish in the licensee's possession. Such data shall include, but is not limited to, species identification, length, weight, age, sex, number, area of catch, harvest method, and quantity of catch.

*Statutory Authority G.S. 113-134; 113-163; 113-164; 113-182.*

**SUBCHAPTER 3J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES**

**SECTION .0100 - NET RULES, GENERAL**

**.0103 GILL NETS, IDENTIFICATION, RESTRICTIONS**

- (a) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets in coastal waters, or any portion thereof, and/or impose any or all of the following restrictions on the use of gill nets:
- (1) Specify area.
  - (2) Specify season.
  - (3) Specify gill net mesh length except that the mesh length shall not be less than 2 1/2 inches.
  - (4) Specify means/methods.
  - (5) Specify gill net number and length.
- (b) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean or any gill nets in internal waters unless such nets are marked by attaching to them at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets which are not connected together at the top line shall be considered as individual nets, requiring two buoys at the end of each individual net. Gill nets connected together at the top line shall be considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets shall be yellow except that one additional identification buoy of any color or any combination of colors may be used at either or both ends. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include one of the following:

- (1) Owner's N.C. ~~motor boat~~ motorboat registration number, or
  - (2) Owner's U.S. vessel documentation name, or
  - (3) Owner's last name and initials.
- (c) It is unlawful to use gill nets:
- (1) Within 200 yards of any pound net which is in use except in Chowan River as provided in 15A NCAC 3J .0203(7);
  - (2) From March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.
- (d) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of Quick Flasher No. 54 in Alligator River at the southern entrance to the Intracoastal Waterway to the South Carolina

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line, unless such net is used in accordance with the following conditions:

- (1) No more than two gill nets per boat may be used at any one time;
- (2) ~~Any net used must be attended by the fisherman from a boat who shall at no time be more than 100 yards from either net; and~~
- (2) Any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted boat navigation.
- (e) It is unlawful to use drift gill nets in violation of 15A NCAC 3J .0101(2) and Paragraph (c) of this Rule.
- (f) It is unlawful to use unattended gill nets or block or stop nets in the Atlantic Ocean within 300 yards of the beach from Beaufort Inlet to the South Carolina line from sunset Friday to sunrise Monday from Memorial Day through Labor Day.
- (g) ~~It is unlawful to use unattended gill nets. Gill nets shall be considered attended if the fishermen is within 100 yards of any part of the net.~~

*Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.*

### .0107 POUND NETS

(a) For the purposes of this Rule, a pound net and any part thereof, including stakes, shall be defined as a net that has a lead and a pound or heart which is designed to trap, gill or enclose fish, shrimp or crabs in a confined area where they can be reduced to possession. A "set" shall include each one lead and a pound or heart or stakes which are set in such a manner as to accommodate such nets.

(b) ~~(a)~~ It is unlawful to use pound or fyke nets in internal coastal fishing waters without the owner's identification being clearly printed on a sign no less than six inches square, securely attached on an outside corner stake of each such net. Such identification must include one of the following:

- (1) For pound nets, the pound net permit number and the owner's last name and initials.
- (2) For fyke nets, the owner's N.C. motorboat registration number, the owner's U.S. vessel documentation name, or the owner's last name and initials.

Any pound or fyke net or any part thereof found set in internal coastal fishing waters without proper identification will be in violation and may be removed and disposed of in accordance with law.

(c) ~~(b)~~ It is unlawful to set pound nets, or any part thereof except location identification stakes at each end of proposed new locations without first obtaining a Pound Net Permit from the Fisheries Director. Within 60 days of application, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Permit for new locations, and may hold public meetings and approve or take other action which may include the denial of Pound Net Permits, deemed necessary to avoid potential user conflicts and to protect traditional uses of the area including construction or use of piers. The Fisheries Director's final decision to approve, deny or modify the pound net permit application may be appealed by requesting in writing, within 20 days of notice of such action, an administrative hearing before the Marine Fisheries Commission. A Pound Net Permit for a new location may be issued following evaluation by the Fisheries Director and will expire 365 days from the date of issue.

(d) ~~(c)~~ It is unlawful to set pound nets in previously registered or permitted locations without first obtaining a Pound Net Permit for each location from the Fisheries Director. Such permits will expire 365 days from the date of issue. Failure to obtain a Pound Net Permit annually, or abandonment of pound net sets without removal of all stakes, shall constitute a violation and be grounds for refusal of any Pound Net Permit. Application for renewal of Pound Net Permits must be filed not less than ten days prior to expiration and will not be processed unless filed by the prior registrant. When an objection to a renewal is filed during the term of the permit, the Fisheries Director shall review and may deny the permit renewal under the criteria for issuance of new Pound Net Permits. Failure to use a pound net site within 60 days of issuance of a Pound Net Permit shall also constitute a violation and be grounds for refusal and/or revocation of other Pound Net Permits. It is unlawful to abandon a pound net set without removal of all stakes.

(e) ~~(d)~~ It is unlawful to use a pound net without leaving a marked navigational opening of at least 25 feet at the end of every third pound. Such openings shall be marked with yellow signs at least six inches square.

(f) ~~(e)~~ It is unlawful to set a pound net, pound net stakes, or other related equipment in internal coastal fishing waters without yellow light reflective tape or devices on each pound. The light reflective tape or devices must be affixed to a stake of at least three inches in diameter on the offshore end of each pound, must cover a vertical distance not less than 12 inches, and must be

visible from a vessel when approached from all directions.

(g) ~~(4)~~ In Core Sound, the Fisheries Director shall by proclamation designate areas for the use of pound and fyke nets.

(h) ~~(5)~~ In Pamlico Sound, it is unlawful to set a pound net, pound net stakes, or any other related equipment without radar reflective metallic material and yellow light reflective tape or devices on each end of the pound net set. The radar reflective material and the light reflective tape or devices must be affixed to a stake of at least three inches in diameter, must cover a vertical distance of not less than 12 inches, and must be detectable by radar and light from a vessel when approached from all directions. Light reflective tape or devices may be affixed to the radar reflective material.

(i) ~~(6)~~ The Fisheries Director may, by proclamation, between August 1 and January 31, require escape panels in pound nets and may impose any or all of the following restrictions on the use of escape panels:

- (1) Specify size, number, and location.
- (2) Specify mesh length, but not more than six inches.
- (3) Specify time and/or season.
- (4) Specify areas.

~~(j) It is unlawful to set more than 15 pound nets per operation. Each pound net shall be a maximum of 250 yards in length including pound. An operation is defined as the crews and/or boats used in conjunction with the harvest of fish or shrimp from the pound nets.~~

*Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.*

#### **SECTION .0300 - POTS, DREDGES, AND OTHER FISHING DEVICES**

##### **.0301 CRAB, EEL, FISH, AND SHRIMP POTS**

(a) It is unlawful to use pots except during time periods and in areas specified herein:

(1) From November 1 through April 30 except that all pots (except fish pots) shall be removed from internal waters from January 24 through February 7. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 28 if it is determined that such waters are free of pots.

(2) From May 1 through October 31, north and east of the Highway 58 Bridge at Emerald Isle in areas described in 15A NCAC 3R .0007 (a), except that the Fisheries Director may, by proclamation, designate the areas ~~in~~ Wycocking Bay de-

scribed in 15A NCAC 3R .0007 (4)(a) (b), or any part thereof, ~~and adjust designated areas in Long Shoal River~~ for the use of pots. ~~during this time period.~~

(3) From May 1 through October 31 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation.

(b) It is unlawful to use pots in any navigation channel maintained and marked by State or Federal agencies.

(c) It is unlawful to use pots unless each pot is marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:

- (1) owner's N.C. motorboat registration number; or
- (2) owner's U.S. vessel documentation name; or
- (3) owner's last name and initials.

(d) Pots attached to shore or a pier shall be exempt from (a) (2), (a) (3), and (c) of this Rule.

(e) It is unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eights inch bar.

(f) It is unlawful to use eel pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of 1" x 1/2" located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots, except that not more than two eel pots per fishing operation with a mesh of any size may be used to take eels for bait.

(g) It is unlawful to use crab pots in coastal waters unless each pot contains no less than two escape rings that are at least 2 5 16 inches inside diameter and located in the opposite outside panels of the upper chamber of the pot. Peeler pots with a mesh size less than 1 1/2 inches shall be exempt from the ~~full~~ escape ring requirement. The Fisheries Director may, by proclamation, exempt the escape ring requirement during the period November through March, and may impose any or all of the following restrictions:

- (1) Specify areas, and
- (2) Specify time.

(h) It is unlawful to use more than 150 pots per vessel in Newport River.

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(i) Any pots found in violation of this Rule or 15A NCAC 3J .0302 may be removed by marine fisheries enforcement officers and disposed of in accordance with law.

*Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.*

### SUBCHAPTER 3K - OYSTERS, CLAMS, SCALLOPS AND MUSSELS

#### SECTION .0200 - OYSTERS

##### .0206 MECHANICAL HARVEST PERMIT REQUIREMENT

(a) It is unlawful to harvest oysters by the use of mechanical methods from public or private bottom without first obtaining a permit. Permits are valid only in the areas, at times, and under conditions specified by the Fisheries Director based on concerns for other fisheries resources in the vicinity of the areas within which such activity is permitted. Such permit may impose conditions and requirements reasonably necessary for management and enforcement purposes.

(b) The permit will be revoked or suspended under the following conditions:

(1) If any permit holder refuses to provide oyster harvest information upon contact by Division staff, either by telephone or in person, his permit shall be suspended. Permits may be reinstated ten days after requested information is provided.

(2) Upon conviction of violation of marine fisheries law, rule, or proclamation involving the use of mechanical methods, the owner's permit will be suspended for no less than the following time periods: first conviction - 10 days; second conviction within three years - 30 days; third conviction within three years - 60 days; and upon the fourth conviction within a three-year period, the permit will be permanently revoked.

(3) Upon conviction of violation of 15A NCAC 3K .0101 or conviction of taking oysters with the use of mechanical methods from coastal waters that are closed by proclamation because of pollution, the owner's permit will be suspended for 30 days for the first conviction, and after the second conviction within a three-year period, the permit will be permanently revoked.

(4) In the event the person makes application for a new permit during the period of suspension, no new permit will be issued during the time specified in this Rule. In cases of permanent revocation, the mini-

mum waiting period before application for a new permit will be considered is six months. Issuance will be only after a hearing before the Fisheries Director or his agent and a finding that issuance of the permit will be in the best interest of fisheries management.

*Statutory Authority G.S. 113-134; 113-182; 143B-289.4.*

### SUBCHAPTER 3M - FINFISH

#### SECTION .0500 - OTHER FINFISH

##### .0501 RED DRUM

(a) The Fisheries Director, may by proclamation, impose any or all of the following restrictions on the taking of red drum:

- (1) Specify areas.
- (2) Specify seasons.
- (3) Specify quantity. but shall not exceed possession of more than two fish over 32 inches total length in any one day.
- (4) Specify means/methods.
- (5) Specify size. but the minimum size specified shall not be less than 14 inches total length.

(b) It is unlawful to sell or offer for sale red drum greater than 20 inches total length.

(c) (b) It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.

*Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.*

##### .0504 TROUT

(a) Spotted seatrout (speckled trout). It is unlawful to possess spotted seatrout less than 12 inches in length. The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of spotted seatrout:

- (1) Specify areas.
- (2) Specify seasons.
- (3) Specify quantity.
- (4) Specify means/methods.
- (5) Specify size.

(b) Weakfish (gray trout). The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of weakfish:

- (1) Specify areas.
- (2) Specify seasons.
- (3) Specify quantity.
- (4) Specify means/methods.
- (5) Specify size, but not greater than 12 inches.

*Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.*

**.0509 TARPON**

- (a) It is unlawful to sell or offer for sale tarpon.
- (b) It is unlawful to possess more than one tarpon per person taken in any one day.
- (c) It is unlawful to take tarpon by any method other than hook-and-line.

*Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.*

**SUBCHAPTER 30 - LICENSES, LEASES, AND FRANCHISES**

**SECTION .0200 - LEASES AND FRANCHISES**

**.0204 MARKING SHELLFISH LEASES AND FRANCHISES**

- (a) All shellfish bottom leases, franchises, and water column leases shall be marked as follows:
  - (1) Shellfish bottom leases and franchises shall be marked by:
    - (A) Stakes of wood or plastic material at least three inches in diameter at the water level and extending at least four feet above the high water mark. The stakes shall be firmly jetted or driven into the bottom at each corner.
    - (B) Signs displaying the number of the lease or franchise and the name of the owner printed in letters at least three inches high must be firmly attached to each corner stake.
    - (C) Supplementary stakes of wood or plastic material, not farther apart than 50 yards or closer together than 50 feet and extending at least four feet above the high water mark, must be placed along each boundary, except when such would interfere with the use of traditional navigation channels.
  - (2) Water column leases shall be marked by anchoring two yellow buoys, meeting the material and minimum size requirements specified in 15A NCAC 3J .0103(a) at each corner of the area or by other means as identified and approved by the Marine Fisheries Commission in the Management Plan.
- (b) Stakes marking areas of management within shellfish bottom leases or franchises, as approved in the management plan, must conform to Subparagraph (a)(1)(C) of this Rule and may not exceed one for each 1,200 square feet. Marking at concentrations of stakes greater than one for each 1,200 square feet constitutes use of the water

column and a water column lease is required in accordance with G.S. 113-202.1 or G.S. 113-202.2.

(c) All areas claimed in filings made pursuant to G.S. 113-205 as deeded bottoms through oyster grants issued by the county clerk of court or as private bottoms through perpetual franchises issued by the Shellfish Commission shall be marked in accordance with Paragraph (a) of this Rule, except the sign shall include the number of the franchise rather than the number of the lease. However, claimed areas not being managed and cultivated shall not be marked.

(d) It is unlawful to fail to remove all stakes, signs, and markers within 30 days of receipt of notice from the Secretary pursuant to Departmental Rule 15A NCAC 1H .0207 that a G.S. 113-205 claim to a marked area has been denied.

(e) It is unlawful to exclude or attempt to exclude the public from allowable public trust use of navigable waters on shellfish leases and franchises including, but not limited to, fishing, hunting, swimming, wading and navigation.

(f) ~~(e)~~ The Division has no duty to protect any shellfish bottom lease, franchise, or water column lease not marked in accordance with Paragraph (a) of this Rule.

*Statutory Authority G.S. 76-40; 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 143B-289.4.*

**.0205 LEASE RENEWAL**

(a) Lease renewal applications will be provided to lessees as follows:

- (1) For shellfish bottom leases, renewal applications will be provided in January of the year of expiration.
- (2) For water column leases, renewal applications will be provided at least 90 days prior to expiration dates.

(b) Lease renewal applications shall be accompanied by management plans meeting the requirements of 15A NCAC 3O .0202(b). A filing fee of fifty dollars (\$50.00) shall accompany each renewal application for shellfish bottom leases.

(c) A survey for renewal leases will be required at the applicant's expense when the Division determines that the area leased to the renewal applicant is inconsistent with the survey on file.

(d) When it is determined, after due notice to the lessee, and after opportunity for the lessee to be heard, that the lessee has not complied with the requirements of this Section or that the lease as issued is inconsistent with this Section, the Secretary may decline to renew, at the end of the current terms, any shellfish bottom or water column lease. The lessee may appeal the Secretary's

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decision to the Marine Fisheries Commission pursuant to G.S. 113-202(p).

(e) Pursuant to G.S. 113-202(a)(6), the Secretary is not authorized to recommend approval of renewal of a shellfish lease in an area closed to shellfishing by reason of pollution. Shellfish leases partially closed due to pollution must be amended to exclude the area closed to shellfishing prior to renewal. For the purposes of this Paragraph, an area will be considered closed to shellfishing by reason of pollution when the area has been classified as prohibited or has been closed for four or more consecutive years prior to renewal upon recommendation by the State Health Director, except shellfish leases in areas which have been closed for four or more years and continue to meet established production requirements by sale of shellfish through relay periods or other recognized means shall not be considered closed due to pollution for renewal purposes.

(f) (4) If the Secretary declines to renew a lease that has been determined to be inconsistent with the standards of this Section, the Secretary, with the agreement of the lessee, may issue a renewal lease for all or part of the area previously leased to the lessee that contains conditions necessary to conform the renewal lease to the minimum requirements of this Section for new leases.

*Statutory Authority* G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.4;

### **.0208 CANCELLATION**

(a) In addition to the grounds established by G.S. 113-202, the Secretary will begin action to terminate leases and franchises for failure to produce and market oysters and/or clams at the following rate:

- (1) For shellfish bottom leases and franchises, 25 bushels per acre per year.
- (2) For water column leases, 100 bushels per acre per year.

These production and marketing rates will be averaged over the most recent three-year period after January 1 following the second anniversary of initial bottom leases and recognized franchises and throughout the terms of renewal leases. For water column leases, these production and marketing rates will be averaged over the first five year period for initial leases and over the most recent three year period thereafter.

(b) Action to terminate a shellfish franchise shall begin when there is reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the

interest acquired under the same. The Division shall investigate all such rights issued in perpetuity to determine whether the Secretary should request that the Attorney General initiate an action pursuant to G.S. 146-63 to vacate or annul the letters patent granted by the state.

(c) Action to terminate a shellfish lease or franchise shall begin when the Fisheries Director has cause to believe the holder of private shellfish rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters.

(d) (e) In the event action to terminate a lease is begun, the owner shall be notified by registered mail and given a period of 30 days in which to correct the situation. Petitions to review the Secretary's decision must be filed with the Office of Administrative Hearings consistent with the provisions of 26 NCAC Chapter 3.

(e) (4) The Secretary's decision to terminate a lease may be appealed to the Marine Fisheries Commission by the owner as provided in G.S. 113-202(p).

*Statutory Authority* G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.4.

### **.0211 PROTECTION OF PRIVATE SHELLFISH INTEREST**

It is unlawful to use any bottom disturbing fishing gear on any shellfish lease or franchise unless it is has been duly authorized by the Fisheries Director.

*Statutory Authority* G.S. 113-134; 113-182; 113-201.

### **SUBCHAPTER 3R - DESCRIPTIVE BOUNDARIES**

#### **.0007 DESIGNATED POT AREAS**

(a) As referenced in 15A NCAC 3J .0301, it is unlawful to use pots north and east of the Highway 58 Bridge at Emerald Isle from May 1 through October 31, except in areas described below:

- (1) In Albemarle Sound and tributaries.
- (2) In Roanoke Sound and tributaries.
- (3) In Croatan Sound and tributaries.
- (4) In Pamlico Sound and tributaries, except the following areas and areas further described in Paragraphs (5), (6), and (7) of this Rule:

(A) (4) In Wysocking Bay:

- (i) Bound by a line beginning at a point on the south shore of Lone Tree Creek 35° 25' 05" N - 76° 02' 05" W running 239° (M) 1000 yards to a point 35° 24' 46" N - 76° 02' 32" W; thence 336° (M)

- 2200 yards to a point  $35^{\circ} 25' 42''$  N -  $76^{\circ} 03' 16''$  W; thence  $062^{\circ}$  (M) 750 yards to a point on shore  $35^{\circ} 25' 54''$  N -  $76^{\circ} 02' 54''$  W; thence following the shoreline and the Lone Tree Creek primary nursery area line to the beginning point;
- (ii) Bound by a line beginning at a point on the south shore of Mt. Pleasant Bay  $35^{\circ} 23' 07''$  N -  $76^{\circ} 04' 12''$  W running  $083^{\circ}$  (M) 1200 yards to a point  $35^{\circ} 23' 17''$  N -  $76^{\circ} 03' 32''$  W; thence  $023^{\circ}$  (M) 2400 yards to a point  $35^{\circ} 24' 27''$  N -  $76^{\circ} 03' 12''$  W; thence  $299^{\circ}$  (M) 1100 yards to a point on shore  $35^{\circ} 24' 38''$  N -  $76^{\circ} 04' 48''$  W; thence following the shoreline and the Browns Island and Mt. Pleasant Bay primary nursery area line to the beginning point; except pots may be set no more than 50 yards from the shoreline.
- (B) (b) In Juniper Bay bound by a line beginning at a point on Juniper Bay Point  $35^{\circ} 20' 18''$  N -  $76^{\circ} 13' 22''$  W running  $275^{\circ}$  (M) 2300 yards to a point  $35^{\circ} 20' 15''$  N -  $76^{\circ} 14' 45''$  W; thence  $007^{\circ}$  (M) 2100 yards to Daymarker No. 3; thence  $040^{\circ}$  (M) 1100 yards to a point on shore  $35^{\circ} 21' 45''$  N -  $76^{\circ} 14' 24''$  W; thence following the shoreline and the Buck Creek primary nursery area line to the beginning point.
- (C) (c) In Swanquarter Bay, bound by a line beginning at a point on the north shore of Caffee Bay  $35^{\circ} 21' 57''$  N -  $76^{\circ} 17' 44''$  W; running  $191^{\circ}$  (M) 800 yards to a point on the south shore  $35^{\circ} 21' 35''$  N -  $76^{\circ} 17' 45''$  W; thence following the shoreline to a point on shore  $35^{\circ} 21' 37''$  N -  $76^{\circ} 18' 22''$  W; thence running  $247^{\circ}$  (M) 1300 yards to a point  $35^{\circ} 21' 17''$  N -  $76^{\circ} 19' 03''$  W; thence  $340^{\circ}$  (M) 1350 yards to a point  $35^{\circ} 21' 51''$  N -  $76^{\circ} 19' 27''$  W; thence  $081^{\circ}$  (M) 1150 yards to a point on the north shore  $35^{\circ} 22' 02''$  N -  $76^{\circ} 18' 48''$  W; thence following the shoreline and the primary nursery area line to the beginning point.
- (D) (d) In Deep Cove east of a line beginning at a point on the south shore  $35^{\circ} 20' 33''$  N -  $76^{\circ} 22' 57''$  W, running  $021^{\circ}$  (M) 1800 yards to a point on the north shore  $35^{\circ} 21' 55''$  N -  $76^{\circ} 22' 43''$  W and west of a line beginning at a point on the south shore  $35^{\circ} 20' 44''$  N -  $76^{\circ} 22' 05''$  W running  $003^{\circ}$  (M) 1400 yards to a point on the north shore  $35^{\circ} 21' 26''$  N -  $76^{\circ} 22' 11''$  W.
- (E) (e) In that area bound by a line beginning at Beacon No. 1 at the mouth of Deep Cove running  $314^{\circ}$  (M) 1400 yards to a point on shore  $35^{\circ} 20' 12''$  N -  $76^{\circ} 24' 18''$  W; thence  $206^{\circ}$  (M) 3250 yards to a point  $35^{\circ} 18' 40''$  N -  $76^{\circ} 24' 54''$  W; thence  $128^{\circ}$  (M) 2000 yards to a point  $35^{\circ} 18' 11''$  N -  $76^{\circ} 23' 51''$  W; thence  $015^{\circ}$  (M) through the "Dope Boat" Beacon 3250 yards to the beginning point.
- (F) (f) Off Striking Bay bound by a line beginning at a point on the west shore of Striking Bay  $35^{\circ} 23' 20''$  N -  $76^{\circ} 26' 59''$  W running  $190^{\circ}$  (M) 1900 yards to a point  $35^{\circ} 22' 23''$  N -  $76^{\circ} 27' 00''$  W; thence  $097^{\circ}$  (M) 900 yards to Beacon No. 2; thence  $127^{\circ}$  (M) 1600 yards to a point  $35^{\circ} 21' 55''$  N -  $76^{\circ} 25' 43''$  W; thence following the shoreline to a point  $35^{\circ} 22' 30''$  N -  $76^{\circ} 25' 14''$  W; thence  $322^{\circ}$  (M) 2200 yards to a point  $35^{\circ} 23' 17''$  N -  $76^{\circ} 26' 10''$  W; thence following the shoreline to a point  $35^{\circ} 23' 19''$  N -  $76^{\circ} 26' 24''$  W; thence  $335^{\circ}$  (M) 900 yards to a point  $35^{\circ} 23' 40''$  N -  $76^{\circ} 26' 43''$  W; thence  $059^{\circ}$  (M) 500 yards to a point  $35^{\circ} 23' 30''$  N -  $76^{\circ} 26' 58''$  W; thence following the shoreline to the beginning point.
- (G) (g) In Rose Bay bound by a line beginning at a point southwest of Swan Point  $35^{\circ} 23' 56''$  N -  $76^{\circ} 23' 39''$  W running  $288^{\circ}$  (M) 1500 yards to a point on shore  $35^{\circ} 24' 03''$  N -  $76^{\circ} 24' 33''$  W; thence  $162^{\circ}$  (M) 1650 yards to a point  $35^{\circ} 23' 19''$  N -  $76^{\circ} 24' 04''$  W; thence  $084^{\circ}$  (M) 1350 yards to a point on shore  $35^{\circ} 23' 29''$  N -  $76^{\circ} 23' 17''$  W; thence following the shoreline to the beginning point.
- (H) (h) In Spencer Bay bound by a line beginning at a point on shore at Willow Point  $35^{\circ} 22' 26''$  N -  $76^{\circ} 28' 00''$  W running  $059^{\circ}$  (M) 1700 yards to a point  $35^{\circ} 22' 57''$  N -  $76^{\circ} 27' 13''$  W; thence  $317^{\circ}$  (M) 1500 yards to a point  $35^{\circ} 23' 25''$  N -  $76^{\circ} 27' 57''$  W; thence  $243^{\circ}$  (M) 1300 yards to a point on shore  $35^{\circ} 23' 02''$  N -  $76^{\circ} 28' 35''$  W; thence following the shoreline to the beginning point.
- (I) (i) In Big Porpoise Bay bound by a line beginning at a point on shore  $35^{\circ} 15' 58''$  N -  $76^{\circ} 29' 10''$  W running  $182^{\circ}$  (M) 750 yards to Sage Point  $35^{\circ} 15' 36''$  N -  $76^{\circ} 29' 06''$  W; thence  $116^{\circ}$  (M) 850 yards to a point  $35^{\circ} 15' 28''$  N -  $76^{\circ} 28' 36''$  W; thence  $023^{\circ}$  (M) 700 yards to a point on shore  $35^{\circ} 15' 48''$  N -  $76^{\circ} 28' 30''$  W; thence following the shoreline to the beginning point.

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(J) (4) In that area north of the target ship beginning at a point  $35^{\circ} 14' 25''$  N -  $76^{\circ} 27' 05''$  W; running  $071^{\circ}$  (M) 2000 yards to a point  $35^{\circ} 14' 52''$  N -  $76^{\circ} 26' 00''$  W; thence  $168^{\circ}$  (M) 1800 yards to a point  $35^{\circ} 14' 03''$  N -  $76^{\circ} 25' 39''$  W; thence  $273^{\circ}$  (M) 2000 yards to a point  $35^{\circ} 13' 57''$  N -  $76^{\circ} 26' 55''$  W; thence  $350^{\circ}$  (M) 1000 yards to the beginning point.

(K) (4) In Middle Bay-Jones Bay area bound by a line beginning at Middle Bay Point  $35^{\circ} 14' 49''$  N -  $76^{\circ} 28' 41''$  W running  $131^{\circ}$  (M) 3550 yards to a point  $35^{\circ} 13' 51''$  N -  $76^{\circ} 26' 53''$  W; thence  $214^{\circ}$  (M) 2600 yards to a point  $35^{\circ} 12' 43''$  N -  $76^{\circ} 27' 34''$  W; thence  $291^{\circ}$  (M) 2700 yards to Sow Island; thence  $181^{\circ}$  (M) 2350 yards to a point  $35^{\circ} 11' 51''$  N -  $76^{\circ} 28' 57''$  W; thence  $254^{\circ}$  (M) 2000 yards to Red Daymarker No. 4; thence  $024^{\circ}$  (M) 3600 yards through Green Flasher No. 5 to Sow Island Point  $35^{\circ} 13' 09''$  N -  $76^{\circ} 29' 28''$  W; thence following the shoreline of Middle Bay to Big Fishing Point  $35^{\circ} 14' 02''$  N -  $76^{\circ} 29' 52''$  W; thence  $008^{\circ}$  (M) 1100 yards to a point on the north shore  $35^{\circ} 14' 33''$  N -  $76^{\circ} 29' 52''$  W; thence following the shoreline to a point  $35^{\circ} 14' 46''$  N -  $76^{\circ} 29' 14''$  W. ~~thence no more than 75 yards from the shoreline to the beginning point.~~

(L) (4) In Jones Bay bound by a line beginning at a point ~~on Sow Island Point~~  $35^{\circ} 13' 09''$  N -  $76^{\circ} 29' 28''$  W ~~running 204° M 2600 yards to Green Flasher No. 5; thence 322° M 2450 yards to a point~~  $35^{\circ} 12' 48''$  N -  $76^{\circ} 30' 58''$  W; thence  $217^{\circ}$  (M) 1200 yards to a point on shore  $35^{\circ} 12' 20''$  N -  $76^{\circ} 31' 16''$  W; thence following the shoreline to a point  $35^{\circ} 12' 36''$  N -  $76^{\circ} 32' 01''$  W; thence  $231^{\circ}$  (M) 600 yards to a point  $35^{\circ} 12' 52''$  N -  $76^{\circ} 31' 45''$  W. ~~thence parallel with the shoreline no more than 600 yards from shore to a point~~  $35^{\circ} 13' 11''$  N -  $76^{\circ} 32' 07''$  W; ~~thence 038° M to a point 600 yards from the north shore~~  $35^{\circ} 13' 39''$  N -  $76^{\circ} 34' 54''$  W; ~~thence parallel with the shoreline no more than 600 yards from shore to a point~~  $35^{\circ} 13' 09''$  N -  $76^{\circ} 30' 48''$  W; ~~thence 009° M 600 yards to a point on shore~~  $35^{\circ} 13' 26''$  N -  $76^{\circ} 30' 47''$  W; thence following the shoreline to the beginning point.

(M) (4) In an area bound by a line beginning at Boar Point  $35^{\circ} 12' 07''$  N -  $76^{\circ} 31' 04''$  W running  $106^{\circ}$  (M) 2000 yards to Green Flasher No. 5; thence  $200^{\circ}$  (M) 2200 yards to a point  $35^{\circ} 10' 56''$  N -  $76^{\circ}$

$30' 10''$  W; thence  $282^{\circ}$  (M) 2350 yards to Bay Point  $35^{\circ} 11' 02''$  N -  $76^{\circ} 31' 35''$  W; thence following the shoreline to the beginning point.

(N) (4) In an area at the mouth of Bay River bound by a line beginning at a point on Maw Point  $35^{\circ} 08' 55''$  N -  $76^{\circ} 32' 10''$  W running  $020^{\circ}$  (M) 1600 yards to Daymarker No. 1; thence  $134^{\circ}$  (M) 3800 yards to Neuse River Junction Quick Flasher; thence  $236^{\circ}$  (M) 1700 yards to Red Day Marker No. 2 PA; thence  $314^{\circ}$  (M) 2750 yards to the beginning point.

(O) (4) The waters within a circular area with a radius of 1,000 yards having its center on the southern side of Brant Island at latitude  $35^{\circ} 12' 30''$  N - longitude  $76^{\circ} 26' 30''$  W.

(5) In Pamlico River west of a line from a point on Pamlico Point  $35^{\circ} 18' 42''$  N -  $76^{\circ} 28' 58''$  W running  $009^{\circ}$  (M) through Daymarker No. 1 and Willow Point Shoal Beacon to a point on Willow Point  $35^{\circ} 22' 23''$  N -  $76^{\circ} 28' 48''$  W pots may be used in the following areas:

(A) (4) In that area bound by a line beginning at a point on the line from Pamlico Point to Willow Point  $35^{\circ} 19' 24''$  N -  $76^{\circ} 28' 56''$  W running westerly parallel to the shoreline at a distance of no more than 1000 yards to a point  $35^{\circ} 19' 24''$  N -  $76^{\circ} 29' 09''$  W; thence running  $218^{\circ}$  (M) 900 yards to a point  $35^{\circ} 19' 02''$  N -  $76^{\circ} 29' 24''$  W 100 yards from shore; thence westerly parallel to the shoreline at a distance of 100 yards to a point  $35^{\circ} 19' 02''$  N -  $76^{\circ} 29' 59''$  W; thence  $006^{\circ}$  (M) 950 yards to a point  $35^{\circ} 19' 30''$  N -  $76^{\circ} 30' 00''$  W; thence westerly parallel to the shoreline at a distance of 1000 yards to a point  $35^{\circ} 20' 06''$  N -  $76^{\circ} 32' 54''$  W; thence  $198^{\circ}$  (M) 550 yards to a point 400 yards from shore  $35^{\circ} 19' 49''$  N -  $76^{\circ} 32' 59''$  W; thence parallel to the shoreline at a distance of 400 yards to a point  $35^{\circ} 19' 50''$  N -  $76^{\circ} 33' 27''$  W; thence  $008^{\circ}$  (M) to a point 1000 yards from shore  $35^{\circ} 20' 09''$  N -  $76^{\circ} 33' 27''$  W; thence westerly parallel to the shoreline at a distance of 1000 yards to a point  $35^{\circ} 20' 12''$  N -  $76^{\circ} 33' 55''$  W; thence  $191^{\circ}$  (M) to a point 400 yards from shore  $35^{\circ} 19' 55''$  N -  $76^{\circ} 33' 56''$  W; thence westerly parallel to the shoreline at a distance of 400 yards to a point  $35^{\circ} 20' 00''$  N -  $76^{\circ} 34' 34''$  W; thence  $004^{\circ}$  (M) 600 yards to a point 1000 yards from shore  $35^{\circ} 20' 19''$  N -  $76^{\circ} 34' 35''$  W; thence westerly parallel to the

shoreline at a distance of 1000 yards to Green Flasher No. 1; thence  $248^\circ$  (M) parallel to the ICWW to a point off Fulford Point  $35^\circ 19' 59''$  N -  $76^\circ 36' 41''$  W; thence  $171^\circ$  (M) to a point on Fulford Point  $35^\circ 19' 41''$  N -  $76^\circ 36' 34''$  W.

(B) (4) All coastal waters and tributaries of Oyster Creek, James Creek, Middle Prong and Clark Creek.

(C) (4) All coastal waters of Goose Creek:

(i) In that area bound by a line beginning at a point on Reed Hammock  $35^\circ 20' 24''$  N -  $76^\circ 36' 51''$  W running  $171^\circ$  (M) 300 yards to a point  $35^\circ 20' 16''$  N -  $76^\circ 36' 48''$  W; thence parallel with the shoreline no more than 300 yards from shore to a point  $35^\circ 20' 09''$  N -  $76^\circ 37' 10''$  W; thence  $302^\circ$  (M) 300 yards to a point on shore  $35^\circ 20' 13''$  N -  $76^\circ 37' 19''$  W.

(ii) In that area bound by a line beginning at a point on shore  $35^\circ 19' 58''$  N -  $76^\circ 37' 33''$  W; running  $291^\circ$  (M) 300 yards to a point  $35^\circ 19' 57''$  N -  $76^\circ 37' 21''$  W; thence parallel to the shoreline no more than 300 yards from shore to a point  $35^\circ 18' 16''$  N -  $76^\circ 37' 16''$  W; thence  $292^\circ$  (M) to a point on the north shore of Snode Creek  $35^\circ 18' 15''$  N -  $76^\circ 37' 27''$  W.

(iii) In that area bound by a line beginning at a point at the mouth of Goose Creek  $35^\circ 19' 59''$  N -  $76^\circ 36' 41''$  W; running  $348^\circ$  (M) to Green Daymarker No. 5; thence south parallel to the shoreline no more than 300 yards from shore to a point  $35^\circ 18' 12''$  N -  $76^\circ 37' 07''$  W; thence  $112^\circ$  (M) to Store Point  $35^\circ 18' 09''$  N -  $76^\circ 36' 57''$  W.

(iv) Between the line from Store Point to Snode Creek and a line beginning at a point on Long Neck Point running  $264^\circ$  (M) through Beacon No. 15 to Huskie Point from the shoreline to no more than 150 yards from shore.

(v) All coastal waters southeast of the line from Long Neck Point through Beacon No. 15 to Huskie Point.

(vi) Campbell Creek - west of a line from a point on Huskie Point  $35^\circ 17' 00''$  N -  $76^\circ 37' 06''$  W running  $004^\circ$  (M) to Pasture Point  $35^\circ 17' 20''$  N -  $76^\circ 37' 08''$  W, to the Inland-Commercial line.

(D) (4) All coastal waters bound by a line beginning on Reed Hammock  $35^\circ 20' 24''$  N -  $76^\circ 36' 51''$  W running  $171^\circ$  (M) to a point  $35^\circ 20' 16''$  N -  $76^\circ 36' 47''$  W; thence  $100^\circ$  (M) 800 yards to Red

Daymarker No. 4; thence  $322^\circ$  (M) 1200 yards to a point  $35^\circ 20' 40''$  N -  $76^\circ 36' 48''$  W; thence westerly parallel to the shoreline at a distance of 300 yards to a point in Bond Creek  $35^\circ 20' 40''$  N -  $76^\circ 41' 37''$  W; thence  $199^\circ$  (M) to a point on the south shore of Muddy Creek  $35^\circ 20' 18''$  N -  $76^\circ 41' 34''$  W, including all waters of Muddy Creek up to the Inland-Coastal boundary line.

(E) (4) Along the west shore of Bond Creek from Fork Point to the Coastal-Inland boundary line from the shoreline to no more than 50 yards from shore.

(F) (4) All coastal waters of South Creek upstream of a line beginning at a point on Fork Point  $35^\circ 20' 45''$  N -  $76^\circ 41' 47''$  W running  $017^\circ$  (M) to a point on Hickory Point  $35^\circ 21' 44''$  N -  $76^\circ 41' 36''$  W.

(G) (4) In that area bound by a line beginning at a point at the six foot depth contour south of Hickory Point  $35^\circ 21' 33''$  N -  $76^\circ 41' 39''$  W; thence easterly following the six foot depth contour to a point off the east end of Indian Island  $35^\circ 21' 42''$  N -  $76^\circ 38' 04''$  W; thence  $270^\circ$  (M) to a point on the east end of Indian Island  $35^\circ 21' 38''$  N -  $76^\circ 38' 36''$  W; thence following the shoreline of Indian Island to a point on the west end  $35^\circ 21' 37''$  N -  $76^\circ 39' 40''$  W; thence  $293^\circ$  (M) toward Daymarker No. 1 to a point at the six foot depth contour  $35^\circ 21' 46''$  N -  $76^\circ 40' 16''$  W; thence following the six foot depth contour in a westerly direction to a point off Long Point  $35^\circ 22' 42''$  N -  $76^\circ 42' 44''$  W; thence  $233^\circ$  (M) to a point on shore  $35^\circ 22' 24''$  N -  $76^\circ 43' 05''$  W.

(H) (4) Beginning at a point on shore near Long Point  $35^\circ 22' 29''$  N -  $76^\circ 43' 25''$  W, running  $001^\circ$  (M) to a point 300 yards offshore  $35^\circ 22' 39''$  N -  $76^\circ 43' 26''$  W; thence westerly parallel to the shoreline at a distance of 300 yards to a point  $35^\circ 22' 39''$  N -  $76^\circ 43' 59''$  W; thence  $209^\circ$  (M) to a point on shore  $35^\circ 22' 30''$  N -  $76^\circ 44' 03''$  W.

(I) (4) Beginning at a point on shore  $35^\circ 22' 30''$  N -  $76^\circ 44' 27''$  W, running  $355^\circ$  (M) to a point offshore  $35^\circ 22' 40''$  N -  $76^\circ 44' 31''$  W; thence westerly parallel to the shoreline at a distance of 300 yards to a point  $35^\circ 22' 53''$  N -  $76^\circ 45' 00''$  W; thence running  $251^\circ$  (M) to a point on shore  $35^\circ 22' 46''$  N -  $76^\circ 45' 14''$  W.

(J) (4) Beginning at a point on shore  $35^\circ 22' 54''$  N -  $76^\circ 45' 43''$  W; running  $003^\circ$  (M) to a point offshore  $35^\circ 23' 03''$  N -  $76^\circ 45'$

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43" W; thence westerly parallel to the shoreline at a distance of 300 yards to the intersection of a line beginning on the north shore at Gum Point 35° 25' 09" N - 76° 45' 33" W; running 210° (M) to a point on the south shore 35° 23' 28" N - 76° 46' 26" W.

(K) ~~(4)~~ All coastal waters west of a line beginning on the north shore at Gum Point 35° 25' 09" N - 76° 45' 33" W running 210° (M) to a point on the south shore 35° 23' 28" N - 76° 46' 26" W.

(L) ~~(4)~~ On the north side of Pamlico River bound by a line beginning at the intersection of the line from Gum Point to the south shore 500 yards from shore 35° 24' 55" N - 76° 45' 39" W running easterly parallel to the shoreline at a distance of 500 yards to a point at the six foot contour near Adams Point 35° 23' 08" N - 76° 35' 59" W.

(M) ~~(m)~~ All waters and tributaries of North Creek except the marked navigation channel.

(N) ~~(n)~~ In that area bound by a line beginning at a point at the six foot contour near Adams Point 35° 23' 08" N - 76° 35' 59" W running westerly following the six foot depth contour to a point off Wades Point 35° 23' 28" N - 76° 34' 09" W.

(O) ~~(o)~~ Pungo River:

(i) Bound by a line beginning at Wades Point 35° 23' 16" N - 76° 34' 30" W running 059° (M) to a point at the six foot depth contour, 35° 23' 28" N - 76° 34' 09" W; thence northerly following the six foot depth contour to a point near Beacon No. 3 35° 25' 44" N - 76° 34' 46" W; thence 272° (M) 950 yards to a point on shore 35° 25' 41" N - 76° 35' 22" W.

(ii) Bound by a line beginning at a point on shore 35° 25' 50" N - 76° 35' 37" W running 050° (M) 1150 yards to a point at 35° 26' 17" N - 76° 35' 10" W; thence northerly following the six foot depth contour to a point 35° 26' 54" N - 76° 36' 09" W; thence 314° (M) 350 yards to a point on shore 35° 27' 00" N - 76° 36' 20" W.

(iii) Bound by a line beginning at a point on shore 35° 27' 14" N - 76° 36' 26" W running 077° (M) 800 yards to a point 35° 27' 23" N - 76° 36' 02" W; thence northerly following the six foot depth contour to a point off Windmill Point 35° 30' 50" N - 76° 38' 09" W; thence 076° (M) to a point 200 yards

west of Daymarker No. 3 35° 31' 21" N - 76° 36' 37" W; thence 312° (M) to a point at the "Breakwater" 35° 31' 36" N - 76° 37' 05" W.

(iv) All coastal waters bound by a line beginning at a point at the "Breakwater" 200 yards northeast of Beacon No. 6 35° 31' 47" N - 76° 36' 51" W running 132° (M) to a point 200 yards from Daymarker No. 4 35° 31' 31" N - 76° 36' 21" W; thence running 102° (M) to a point 35° 31' 28" N - 76° 35' 59" W; thence running 010° (M) to Beacon No. 1; thence running 045° (M) 700 yards to a point on shore 35° 32' 22" N - 76° 35' 42" W.

(v) All coastal waters north and east of a line beginning at a point on shore west of Lower Dowry Creek 35° 32' 25" N - 76° 35' 07" W running 177° (M) 1950 yards to a point 200 yards north of Daymarker No. 11 35° 31' 31" N - 76° 35' 06" W; thence easterly parallel to the marked navigation channel at a distance of 200 yards to a point on the shore northwest of Wilkerson Creek 35° 33' 13" N - 76° 27' 36" W.

(vi) All coastal waters south of a line beginning on shore south of Wilkerson Creek 35° 33' 02" N - 76° 27' 20" W running westerly parallel to the marked navigation channel at a distance of 200 yards to a point southeast of Daymarker No. 14 35° 31' 05" N - 76° 32' 34" W; thence running 208° (M) to a point on shore 35° 30' 28" N - 76° 32' 47" W.

(vii) All coastal waters bound by a line beginning on shore east of Durants Point 35° 30' 29" N - 76° 33' 25" W running 347° (M) to a point southwest of Daymarker No. 12 35° 31' 08" N - 76° 33' 53" W; thence westerly parallel to the marked navigation channel at a distance of 200 yards to a point south of Beacon No. 10 35° 31' 08" N - 76° 35' 35" W; thence running 185° (M) to a point at the six foot depth contour between Beacon No. 8 and the eastern shore of Pungo River 35° 30' 08" N - 76° 35' 28" W; thence following the six foot depth contour to a point 35° 28' 09" N - 76° 33' 43" W; thence 127° (M) to a point on shore 35° 28' 00" N - 76° 33' 25" W; thence 159° (M) to a point at the six foot depth contour 35° 27' 40" N - 76° 33' 12" W including the waters of Slades Creek and its

- tributaries; thence 209° (M) to a point on shore 35° 27' 22" N - 76° 33' 21" W; thence 272° (M) to a point at the six foot depth contour 35° 27' 18" N - 76° 33' 53" W; thence southerly following the six foot depth contour to a point south of Sandy Point 35° 26' 35" N - 76° 33' 50" W; thence 087° (M) to a point on shore 35° 26' 38" N - 76° 33' 34" W.
- (viii) In that area bound by a line beginning at a point on shore 35° 26' 20" N - 76° 33' 18" W running 176° (M) to a point at the six foot depth contour 35° 26' 05" N - 76° 33' 13" W; thence southerly following the six foot depth contour throughout Fortescue Creek to a point off Fortescue Creek 35° 25' 44" N - 76° 32' 09" W; thence 145° (M) to a point on shore 35° 25' 36" N - 76° 32' 01" W.
- (ix) In that area bound by a line beginning at a point on shore 35° 25' 20" N - 76° 32' 01" W running 258° (M) to a point at the six foot depth contour 35° 25' 17" N - 76° 32' 18" W; thence following the six foot depth contour to a point 500 yards west of Currituck Point 35° 24' 30" N - 76° 32' 42" W; thence southeasterly parallel to the shoreline and including Abel Bay at a distance of 500 yards to a point at the intersection of the line from Pamlico Point to Willow Point 35° 22' 09" N - 76° 28' 48" W.
- (6) In Bay River west of a line beginning at a point on Maw Point 35° 09' 02" N - 76° 32' 09" W running 022° (M) to a point on Bay Point 35° 11' 02" N - 76° 31' 34" W, pots may be used in the following areas:
- (A) (a) In that area beginning at a point on Maw Point 35° 09' 02" N - 76° 32' 09" W; running 018° (M) to Green Daymarker No. 1; thence 223° (M) to a point on shore in Fisherman Bay 35° 09' 18" N - 76° 32' 23" W.
- (B) (b) In Fisherman Bay bound by a line beginning at a point on the shore west of Maw Point 35° 09' 18" N - 76° 33' 02" W; thence 351° (M) 3200 yards to lighted Beacon No. 3 in Bay River; thence 230° (M) 1200 yards to a point on the shore 35° 10' 24" N - 76° 34' 00" W.
- (C) (c) In that area bound by a line beginning at a point on the east shore at the mouth of Bonners Bay 35° 10' 05" N - 76° 35' 18" W; thence 306° (M) 300 yards to a point in Bay River, 35° 10' 10" N - 76° 35' 30" W; thence parallel to the shoreline no more than 300 yards from shore to a point in Bay River 35° 10' 40" N - 76° 34' 42" W; thence 188° (M) to a point on shore 35° 10' 27" N - 76° 34' 42" W.
- (D) (d) In Bonner Bay bound by a line beginning at a point on the east shore 35° 10' 05" N - 76° 35' 18" W running 306° (M) 200 yards to a point 35° 10' 09" N - 76° 35' 25" W; thence parallel to the shoreline no more than 200 yards offshore to a point 35° 09' 16" N - 76° 35' 18" W; thence 097° (M) 200 yards to a point on shore 35° 09' 16" N - 76° 35' 13" W.
- (E) (e) In Bonner Bay, Spring Creek and Long Creek south of a line beginning at a point on the east shore 35° 09' 16" N - 76° 35' 13" W running 274° (M) to a point on the west shore 35° 09' 14" N - 76° 35' 43" W.
- (F) (f) In Bonner Bay bound by a line beginning at a point on the west shore 35° 09' 14" N - 76° 35' 44" W running 094° (M) 100 yards to a point 35° 09' 13" N - 76° 35' 39" W; thence parallel to the shoreline no more than 100 yards offshore to a point in Riggs Creek 35° 09' 15" N - 76° 36' 08" W; thence 142° (M) to a point on shore 35° 09' 13" N - 76° 36' 08" W.
- (G) (g) In that area bound by a line beginning on the south shore of Bay River west of Bell Point 35° 09' 40" N - 76° 40' 00" W, running 314° (M) to a point 200 yards offshore 35° 09' 43" N - 76° 40' 06" W; thence no more than 200 yards from the shoreline to a point 35° 09' 53" N - 76° 36' 45" W; thence 102° (M) to a point 35° 09' 50" N - 76° 35' 54" W; thence 181° (M) to a point 35° 09' 36" N - 76° 35' 51" W; thence 237° (M) to a point in Riggs Creek 35° 09' 18" N - 76° 36' 12" W; thence 322° (M) to a point on shore at the mouth of Riggs Creek 35° 09' 21" N - 76° 36' 18" W.
- (H) (h) In that area on the south side of Bay River bound by a line beginning at a point on shore at the confluence of Bay River and Trent Creek 35° 08' 27" N - 76° 43' 12" W running 016° (M) 150 yards to a point 35° 08' 31" N - 76° 43' 11" W; thence no more than 150 yards from shore to a point 35° 08' 57" N - 76° 40' 19" W; thence 116° (M) to a point on shore at Moores Creek 35° 08' 57" N - 76° 40' 14" W.
- (I) (i) In Bay River and Trent Creek west of a line beginning at a point on the south

## PROPOSED RULES

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- shore  $35^{\circ} 08' 27''$  N -  $76^{\circ} 43' 12''$  W running  $016^{\circ}$  (M) to a point on the north shore  $35^{\circ} 08' 41''$  N -  $76^{\circ} 43' 09''$  W.
- (J) ~~(+) In that area on the north shore of Bay River bound by a line beginning at a point west of Vandemere Creek  $35^{\circ} 10' 53''$  N -  $76^{\circ} 39' 42''$  W running  $135^{\circ}$  (M) 150 yards to a point  $35^{\circ} 10' 52''$  N -  $76^{\circ} 39' 39''$  W; thence no more than 150 yards from shore to a point at the confluence of Bay River and Trent Creek  $35^{\circ} 08' 37''$  N -  $76^{\circ} 43' 10''$  W; thence to a point on the north shore  $35^{\circ} 08' 39''$  N -  $76^{\circ} 43' 09''$  W.~~
- (K) ~~(+) In Vandemere Creek northeast of a line beginning at a point on the east shore  $35^{\circ} 11' 04''$  N -  $76^{\circ} 39' 22''$  W running  $315^{\circ}$  (M) to a point on the west shore  $35^{\circ} 11' 12''$  N -  $76^{\circ} 39' 36''$  W.~~
- (L) ~~(+) In that area bound by a line beginning at a point at the mouth of Vandemere Creek  $35^{\circ} 11' 04''$  N -  $76^{\circ} 39' 22''$  W, running  $216^{\circ}$  (M) 200 yards to a point in Bay River  $35^{\circ} 10' 58''$  N -  $76^{\circ} 39' 25''$  W; thence parallel to the shoreline no more than 200 yards from shore to a point in Bay River northwest of Beacon No. 4  $35^{\circ} 10' 40''$  N -  $76^{\circ} 36' 38''$  W; thence  $344^{\circ}$  (M) 200 yards to a point on shore  $35^{\circ} 10' 45''$  N -  $76^{\circ} 36' 42''$  W.~~
- (M) ~~(+) In that area bound by a line beginning at a point on Sanders Point  $35^{\circ} 11' 19''$  N -  $76^{\circ} 35' 54''$  W; running  $067^{\circ}$  (M) 200 yards to a point  $35^{\circ} 11' 23''$  N -  $76^{\circ} 35' 47''$  W; thence following the shoreline no more than 200 yards from shore to a point in Bay River northwest of Beacon No. 4  $35^{\circ} 10' 40''$  N -  $76^{\circ} 36' 38''$  W; thence  $344^{\circ}$  (M) 200 yards to a point on the shore  $35^{\circ} 10' 45''$  N -  $76^{\circ} 36' 42''$  W.~~
- (N) ~~(+) In that area beginning at a point on shore  $35^{\circ} 11' 53''$  N -  $76^{\circ} 35' 54''$  W of a line running  $170^{\circ}$  (M) to a point  $35^{\circ} 11' 40''$  N -  $76^{\circ} 35' 51''$  W; thence parallel to the shoreline no more than 500 yards from shore to a point  $35^{\circ} 11' 57''$  N -  $76^{\circ} 35' 05''$  W; thence running  $344^{\circ}$  (M) to a point on shore at the mouth of Gales Creek  $35^{\circ} 12' 10''$  N -  $76^{\circ} 35' 12''$  W.~~
- (O) ~~(+) In that area bound by a line beginning at a point on shore at the mouth of Gale Creek  $35^{\circ} 12' 08''$  N -  $76^{\circ} 34' 52''$  W, running  $278^{\circ}$  (M) 200 yards to a point in Bay River  $35^{\circ} 12' 08''$  N -  $76^{\circ} 35' 02''$  W; thence running parallel to the shoreline at a distance of 200 yards to a point in Bay River  $35^{\circ} 11' 32''$  N -  $76^{\circ} 33' 24''$  W; thence running  $352^{\circ}$  (M) 200 yards to a point on shore at Dump Creek  $35^{\circ} 11' 39''$  N -  $76^{\circ} 33' 25''$  W.~~
- (P) ~~(+) In Gale Creek except the Intracoastal Waterway north of a line beginning at a point on the west shore  $35^{\circ} 12' 08''$  N -  $76^{\circ} 35' 12''$  W running  $098^{\circ}$  (M) to a point on the west shore  $35^{\circ} 12' 08''$  N -  $76^{\circ} 34' 52''$  W.~~
- (Q) ~~(+) In an area bound by a line beginning at a point on the eastern shore at the mouth of Rockhole Bay  $35^{\circ} 11' 06''$  N -  $76^{\circ} 32' 11''$  W; thence  $180^{\circ}$  (M) 600 yards to a point in Bay River  $35^{\circ} 10' 49''$  N -  $76^{\circ} 32' 09''$  W; thence east with the five foot curve 1100 yards to a point  $35^{\circ} 10' 36''$  N -  $76^{\circ} 31' 30''$  W; thence  $000^{\circ}$  (M) 850 yards to a point on Bay Point  $35^{\circ} 11' 02''$  N -  $76^{\circ} 31' 34''$  W.~~
- (7) In the Neuse River and West Bay Area south and west of a line beginning at a point on Maw Point  $35^{\circ} 09' 02''$  N -  $76^{\circ} 32' 09''$  W, running  $137^{\circ}$  (M) through the Maw Point Shoal Day Marker No. 2 and through the Neuse River Entrance Light to a point at the mouth of West Bay  $35^{\circ} 02' 09''$  N -  $76^{\circ} 21' 53''$  W, pots may be set in the following areas:
- (A) ~~(+) All coastal fishing waters northwest of a line beginning at a point at the mouth of Sloeum Creek  $34^{\circ} 57' 02''$  N -  $76^{\circ} 53' 42''$  W, running  $029^{\circ}$  (M) to a point at the mouth of Beards Creek  $35^{\circ} 00' 08''$  N -  $76^{\circ} 52' 13''$  W. Pots may also be set in coastal fishing waters of Goose Bay and Upper Broad Creek.~~
- (B) ~~(+) In that area bound by a line beginning at a point on the north shore at Mill Creek  $34^{\circ} 59' 34''$  N -  $76^{\circ} 51' 06''$  W; thence running  $223^{\circ}$  (M) approximately 300 yards into the river to a point  $34^{\circ} 59' 25''$  N -  $76^{\circ} 51' 14''$  W; thence along the six foot depth curve southeast to a point at the rock jetty  $34^{\circ} 58' 06''$  N -  $76^{\circ} 49' 14''$  W; thence  $016^{\circ}$  (M) approximately 300 yards to a point on the shore  $34^{\circ} 58' 17''$  N -  $76^{\circ} 49' 12''$  W.~~
- (C) ~~(+) In that area bound by a line beginning at a point on the north shore approximately 500 yards west of Pierson Point  $34^{\circ} 58' 32''$  N -  $76^{\circ} 46' 38''$  W; thence running  $171^{\circ}$  (M) approximately 300 yards into the river to a point  $34^{\circ} 58' 24''$  N -  $76^{\circ} 46' 34''$  W; thence east and northeast along the six foot curve to a point in the river  $34^{\circ} 58' 47''$  N -  $76^{\circ} 45' 39''$  W; thence  $330^{\circ}$  (M) approximately 700 yards to a point on the shore 50 yards~~

west of an existing pier  $34^{\circ} 59' 04''$  N -  $76^{\circ} 45' 54''$  W.

(D) ~~(4)~~ In that area bound by a line beginning at a point on the north shore east of Dawson Creek Bridge  $34^{\circ} 59' 34''$  N -  $76^{\circ} 45' 12''$  W; thence running  $244^{\circ}$  (M) approximately 500 yards to Day Marker No. 4 (entrance to Dawson Creek Channel); thence running east  $117^{\circ}$  (M) to a point  $34^{\circ} 59' 22''$  N -  $76^{\circ} 45' 19''$  W; thence east and northeast along the six foot curve to a point 50 yards west of Day Marker No. 3 (channel to Oriental)  $35^{\circ} 01' 02''$  N -  $76^{\circ} 41' 51''$  W; thence  $303^{\circ}$  (M) approximately 600 yards to a point on the eastern tip of Windmill Point  $35^{\circ} 01' 10''$  N -  $76^{\circ} 42' 08''$  W.

(E) ~~(5)~~ In Greens Creek (Oriental) west of a line at the confluence of Greens and Kershaw Creeks beginning at a point on the south shore  $35^{\circ} 01' 28''$  N -  $76^{\circ} 42' 55''$  W running  $005^{\circ}$  (M) to a point on the north shore  $35^{\circ} 01' 38''$  N -  $76^{\circ} 42' 54''$  W, no more than 75 yards from the shoreline east of this line to the Highway 55 bridge.

(F) ~~(6)~~ In that area bound by a line beginning at a point on Whittaker Point  $35^{\circ} 01' 37''$  N -  $76^{\circ} 40' 56''$  W; thence running  $192^{\circ}$  (M) approximately 500 yards to a point in the river  $35^{\circ} 01' 23''$  N -  $76^{\circ} 40' 57''$  W; thence along the six foot depth curve northeast to a point in the river off Orchard Creek  $35^{\circ} 03' 18''$  N -  $76^{\circ} 37' 53''$  W; thence  $280^{\circ}$  (M) approximately 900 yards to a point on the eastern tip of Cockle Point  $35^{\circ} 03' 20''$  N -  $76^{\circ} 38' 27''$  W.

(G) ~~(7)~~ In that area bound by a line beginning at a point on the north shore near the mouth of Orchard Creek  $35^{\circ} 03' 38''$  N -  $76^{\circ} 37' 54''$  W running  $177^{\circ}$  (M) approximately 400 yards to a point  $35^{\circ} 03' 27''$  N -  $76^{\circ} 37' 54''$  W; thence along the six foot depth curve to a point eastward; thence  $174^{\circ}$  (M) 600 yards to a point on the north shore  $35^{\circ} 03' 56''$  N -  $76^{\circ} 36' 42''$  W.

(H) ~~(8)~~ In that area bound by a line beginning at a point on the north shore approximately 400 yards south of Gum Thicket Creek  $35^{\circ} 04' 12''$  N -  $76^{\circ} 36' 11''$  W; thence running  $132^{\circ}$  (M) approximately 600 yards to a point  $35^{\circ} 03' 55''$  N -  $76^{\circ} 35' 48''$  W; thence along the six foot depth curve eastward to a point  $35^{\circ} 04' 10''$  N -  $76^{\circ} 34' 37''$  W; thence  $304^{\circ}$  (M) to a point on the shore 400 yards

north of Gum Thicket Creek  $35^{\circ} 04' 38''$  N -  $76^{\circ} 35' 42''$  W.

(I) ~~(9)~~ In Lower Broad Creek east of a line running  $188^{\circ}$  (M) through Red Day Marker No. 4. No more than 150 yards from shore between a line running  $188^{\circ}$  (M) through Red Day Marker No. 4 and a line running  $228^{\circ}$  (M) through Green Marker No. 3. Pots may not be set in Burton Creek.

(J) ~~(10)~~ Piney Point Shoal Area, in that area bound by a line beginning at a point on the north side of a creek (locally known as Wadin or Persimmon Creek)  $35^{\circ} 07' 17''$  N -  $76^{\circ} 33' 26''$  W running  $115^{\circ}$  (M) approximately 300 yards to a point near the six foot depth curve  $35^{\circ} 07' 15''$  N -  $76^{\circ} 33' 16''$  W; thence south and southeast along the six foot depth curve to a point east of the old lighthouse  $35^{\circ} 05' 17''$  N -  $76^{\circ} 32' 42''$  W; thence  $288^{\circ}$  (M) through the old lighthouse to a point on shore north of Red Day Marker No. 2 at the mouth of Broad Creek  $35^{\circ} 05' 42''$  N -  $76^{\circ} 35' 18''$  W.

(K) ~~(11)~~ In that area bound by a line beginning at a point on the south shore of Maw Bay  $35^{\circ} 08' 32''$  N -  $76^{\circ} 32' 38''$  W; thence running  $114^{\circ}$  (M) to Maw Point Shoal Day Marker No. 2; thence  $317^{\circ}$  (M) to Maw Point  $35^{\circ} 08' 55''$  N -  $76^{\circ} 32' 11''$  W.

(L) ~~(12)~~ In that area east of Slocum Creek bound by a line beginning at a point  $34^{\circ} 57' 02''$  N -  $76^{\circ} 53' 42''$  W; thence running  $029^{\circ}$  (M) approximately 1100 yards to a point  $34^{\circ} 57' 32''$  N -  $76^{\circ} 53' 28''$  W; thence along the six foot curve to a point  $34^{\circ} 56' 34''$  N -  $76^{\circ} 49' 38''$  W; thence  $176^{\circ}$  (M) approximately 300 yards to a point  $34^{\circ} 56' 26''$  N -  $76^{\circ} 49' 35''$  W.

(M) ~~(13)~~ In that area bound by a line beginning at a point  $34^{\circ} 56' 22''$  N -  $76^{\circ} 49' 05''$  W, running  $057^{\circ}$  (M) approximately 1100 yards to Day Marker "2" off Cherry Point; thence  $097^{\circ}$  (M) approximately 200 yards to a point  $34^{\circ} 56' 42''$  N -  $76^{\circ} 48' 27''$  W; thence along the six foot curve to a point  $34^{\circ} 55' 10''$  N -  $76^{\circ} 45' 40''$  W; thence  $187^{\circ}$  (M) approximately 400 yards to a point on Temple Point  $34^{\circ} 54' 58''$  N -  $76^{\circ} 45' 40''$  W.

(N) ~~(14)~~ In that area southeast of a line beginning at a point at the mouth of Clubfoot Creek  $34^{\circ} 55' 20''$  N -  $76^{\circ} 45' 09''$  W running  $076^{\circ}$  (M) to a point on shore  $34^{\circ} 55' 37''$  N -  $76^{\circ} 44' 23''$  W.

(O)  $\leftrightarrow$  In Clubfoot Creek south of a line beginning at a point on the east shore  $34^{\circ} 54' 30''$  N -  $76^{\circ} 45' 26''$  W, running  $284^{\circ}$  (M) to a point on the west shore  $34^{\circ} 54' 33''$  N -  $76^{\circ} 45' 43''$  W. Pots may be set 50 yards from shore north of this line.

(P)  $\leftrightarrow$  In that area bound by a line beginning at the western tip of Great Island  $34^{\circ} 55' 47''$  N -  $76^{\circ} 44' 50''$  W; thence running  $275^{\circ}$  (M) approximately 500 yards to a point  $34^{\circ} 55' 46''$  N -  $76^{\circ} 45' 07''$  W; thence  $029^{\circ}$  (M) approximately 1400 yards to a point  $34^{\circ} 56' 24''$  N -  $76^{\circ} 44' 48''$  W; thence  $120^{\circ}$  (M) to a point  $34^{\circ} 56' 06''$  N -  $76^{\circ} 43' 59''$  W; thence  $232^{\circ}$  (M) to a point on Great Island  $34^{\circ} 55' 50''$  N -  $76^{\circ} 44' 17''$  W.

(Q)  $\leftrightarrow$  In that area bound by a line beginning at a point west of Long Creek  $34^{\circ} 55' 38''$  N -  $76^{\circ} 44' 18''$  W running  $064^{\circ}$  (M) to a point  $34^{\circ} 55' 57''$  N -  $76^{\circ} 43' 43''$  W; thence  $138^{\circ}$  (M) to a point on shore at the mouth of Great Neck Creek  $34^{\circ} 55' 50''$  N -  $76^{\circ} 43' 25''$  W.

(R)  $\leftrightarrow$  In that area bound by a line beginning at a point at the mouth of Great Neck Creek  $34^{\circ} 55' 50''$  N -  $76^{\circ} 43' 25''$  W, running  $318^{\circ}$  (M) 750 yards to a point  $34^{\circ} 56' 04''$  N -  $76^{\circ} 43' 47''$  W; thence following the shoreline no more than 750 yards from shore to a point  $34^{\circ} 56' 50''$  N -  $76^{\circ} 43' 11''$  W; thence  $116^{\circ}$  (M) 750 yards to a point on shore at Courts Creek  $34^{\circ} 56' 42''$  N -  $76^{\circ} 42' 46''$  W.

(S)  $\leftrightarrow$  In that area bound by a line beginning at a point on Courts Creek  $34^{\circ} 56' 42''$  N -  $76^{\circ} 42' 46''$  W, running  $296^{\circ}$  (M) 1000 yards to a point  $34^{\circ} 56' 52''$  N -  $76^{\circ} 43' 20''$  W; thence parallel with the shoreline no more than 1000 yards to a point  $34^{\circ} 57' 53''$  N -  $76^{\circ} 41' 59''$  W; thence  $190^{\circ}$  (M) 1000 yards to a point on shore  $34^{\circ} 57' 24''$  N -  $76^{\circ} 42' 00''$  W.

(T)  $\leftrightarrow$  In that area bound by a line beginning at a point on shore,  $34^{\circ} 57' 24''$  N -  $76^{\circ} 42' 00''$  W, running  $010^{\circ}$  (M) 500 yards to a point  $34^{\circ} 57' 38''$  N -  $76^{\circ} 42' 00''$  W; thence running parallel to the shoreline no more than 500 yards from shore to a point  $34^{\circ} 57' 33''$  N -  $76^{\circ} 41' 00''$  W; thence  $179^{\circ}$  (M) to a point  $34^{\circ} 57' 23''$  N -  $76^{\circ} 40' 58''$  W; thence  $260^{\circ}$  (M) to a point on shore at the mouth of Adams Creek  $34^{\circ} 57' 22''$  N -  $76^{\circ} 41' 10''$  W.

(U)  $\leftrightarrow$  In that area bound by a line beginning at a point on the northeast side of Adams Creek  $34^{\circ} 57' 30''$  N -  $76^{\circ} 40' 36''$

W; thence  $278^{\circ}$  (M) 225 yards offshore to a point  $34^{\circ} 57' 30''$  N -  $76^{\circ} 40' 45''$  W; thence  $359^{\circ}$  (M) to a point off Winthrop Point  $34^{\circ} 58' 26''$  N -  $76^{\circ} 40' 56''$  W; thence running  $056^{\circ}$  (M) to a point off Cedar Point  $34^{\circ} 59' 07''$  N -  $76^{\circ} 40' 04''$  W; thence  $140^{\circ}$  (M) to the shoreline on Cedar Point  $34^{\circ} 58' 50''$  N -  $76^{\circ} 39' 41''$  W.

(V)  $\leftrightarrow$  In that area bound by a line beginning at a point on Cedar Point  $34^{\circ} 58' 50''$  N -  $76^{\circ} 39' 41''$  W, running  $320^{\circ}$  (M) 750 yards to a point  $34^{\circ} 59' 05''$  N -  $76^{\circ} 40' 01''$  W; thence parallel to the shoreline no more than 750 yards from shore to a point  $34^{\circ} 59' 16''$  N -  $76^{\circ} 39' 31''$  W; thence  $167^{\circ}$  (M) to a point on shore  $34^{\circ} 58' 56''$  N -  $76^{\circ} 39' 21''$  W.

(W)  $\leftrightarrow$  In that area bound by a line beginning at a point on shore  $34^{\circ} 58' 56''$  N -  $76^{\circ} 39' 21''$  W running  $347^{\circ}$  (M) to a point  $34^{\circ} 59' 03''$  N -  $76^{\circ} 39' 24''$  W; thence parallel to the shoreline no more than 200 yards from shore to a point  $34^{\circ} 59' 08''$  N -  $76^{\circ} 38' 47''$  W; thence  $184^{\circ}$  (M) to a point on shore  $34^{\circ} 59' 01''$  N -  $76^{\circ} 35' 25''$  W.

(X)  $\leftrightarrow$  In that area bound by a line beginning at a point west of Garbacon Creek  $34^{\circ} 59' 01''$  N -  $76^{\circ} 38' 43''$  W, running  $004^{\circ}$  (M) 750 yards to a point  $34^{\circ} 59' 23''$  N -  $76^{\circ} 38' 46''$  W; thence parallel with the shoreline no more than 750 yards from shore to a point off Browns Creek  $35^{\circ} 00' 20''$  N -  $76^{\circ} 33' 45''$  W; thence  $172^{\circ}$  (M) to the shoreline on the west side of Browns Creek  $34^{\circ} 59' 57''$  N -  $76^{\circ} 33' 35''$  W.

(Y)  $\leftrightarrow$  In that area bound by a line beginning at a point on shore at the mouth of Browns Creek  $34^{\circ} 59' 55''$  N -  $76^{\circ} 33' 29''$  W, running  $352^{\circ}$  (M) 750 yards to a point on  $35^{\circ} 00' 22''$  N -  $76^{\circ} 33' 34''$  W; thence parallel to the shoreline no more than 750 yards from shore to a point  $35^{\circ} 03' 56''$  N -  $76^{\circ} 28' 56''$  W; thence  $136^{\circ}$  (M) 750 yards to a point on shore north of Rattan Bay  $35^{\circ} 03' 45''$  N -  $76^{\circ} 28' 32''$  W.

(Z)  $\leftrightarrow$  In that area bound by a line beginning on the north side of Rattan Bay at a point on the shoreline  $35^{\circ} 03' 45''$  N -  $76^{\circ} 28' 32''$  W; thence running  $316^{\circ}$  (M) 600 yards offshore to a point  $35^{\circ} 03' 54''$  N -  $76^{\circ} 28' 52''$  W; thence running parallel with the shoreline 600 yards offshore to a point  $35^{\circ} 04' 09''$  N -  $76^{\circ} 26' 44''$  W; thence  $239^{\circ}$  (M) 600 yards to a point on shore  $35^{\circ} 04' 57''$  N -  $76^{\circ} 27' 00''$  W.

**(AA) (aa)** In Adams Creek:

- (i) Between a line running  $080^\circ$  (M) through Red Flasher No. 4 at the mouth of Adams Creek and a line beginning at a point on the south shore of Cedar Creek  $34^\circ 55' 52''$  N -  $76^\circ 38' 49''$  W, running  $297^\circ$  (M) to a point on the west shore of Adams Creek  $34^\circ 56' 03''$  N -  $76^\circ 39' 27''$  W, no more than 200 yards from shore.
- (ii) Between a line beginning at a point at the mouth of Cedar Creek  $34^\circ 55' 52''$  N -  $76^\circ 38' 49''$  W; running  $297^\circ$  (M) to a point on the west shore of Adams Creek  $34^\circ 56' 03''$  N -  $76^\circ 39' 27''$  W, and a line beginning at a point on the east shore  $34^\circ 54' 55''$  N -  $76^\circ 39' 36''$  W; running  $280^\circ$  (M) to a point on the west shore  $34^\circ 54' 55''$  N -  $76^\circ 40' 01''$  W; no more than 300 yards from the west shore and 200 yards from the east shore.
- (iii) South of a line beginning at a point on the east shore  $34^\circ 54' 55''$  N -  $76^\circ 39' 36''$  W, running  $280^\circ$  (M) to a point on the west shore  $34^\circ 54' 55''$  N -  $76^\circ 40' 01''$  W, except in the marked navigation channel.

**(BB) (bb)** In South River:

- (i) Southeast of a line beginning at a point on the southwest shore  $34^\circ 58' 35''$  N -  $76^\circ 35' 25''$  W, running  $049^\circ$  (M) through Red Flasher No. 2 to a point on the northeast shore  $34^\circ 59' 07''$  N -  $76^\circ 34' 52''$  W, no more than 200 yards from the shoreline.
- (ii) That area bound by a line beginning at a point on the southwest shore  $34^\circ 58' 35''$  N -  $76^\circ 35' 25''$  W, running  $049^\circ$  (M) to Red Flasher No. 2; thence running  $207^\circ$  (M) to a point north of Hardy Creek  $34^\circ 58' 13''$  N -  $76^\circ 35' 22''$  W; thence following the shoreline to the point of beginning.

**(CC) (cc)** In Turnagain Bay:

- (i) Between a line running  $077^\circ$  (M) through Green Flasher No. 1 and a line beginning at a point on the east shore  $34^\circ 59' 04''$  N -  $76^\circ 29' 01''$  W; running  $276^\circ$  (M) to a point on the west shore  $34^\circ 59' 03''$  N -  $76^\circ 29' 28''$  W, no more than 300 yards on the east shore and 100 yards on the west shore.
- (ii) Between a line beginning at a point on the east shore  $34^\circ 59' 04''$  N -  $76^\circ 29' 01''$  W, running  $276^\circ$  (M) to a point on the west shore  $34^\circ 59' 03''$  N -  $76^\circ 29' 28''$  W, and a line beginning at a

point on the east shore  $34^\circ 57' 56''$  N -  $76^\circ 29' 25''$  W, running  $275^\circ$  (M) to a point on the west shore  $34^\circ 57' 58''$  N -  $76^\circ 29' 44''$  W, no more than 150 yards from shore.

**(DD) (dd)** In Cedar Bay east of a line beginning at a point  $35^\circ 00' 51''$  N -  $76^\circ 29' 42''$  W running  $023^\circ$  (M) to a point  $35^\circ 01' 09''$  N -  $76^\circ 29' 37''$  W, not more than 200 yards from the shoreline.

**(EE) (ee)** In West Bay - North Bay area:

- (i) In that area bound by a line beginning at a point  $35^\circ 02' 32''$  N -  $76^\circ 22' 27''$  W; thence southwest  $220^\circ$  (M) to Marker No. 5 WB; thence southeast  $161^\circ$  (M) to a point in West Bay  $35^\circ 00' 34''$  N -  $76^\circ 21' 50''$  W; thence southwest  $184^\circ$  (M) to Deep Bend Point  $34^\circ 58' 36''$  N -  $76^\circ 21' 48''$  W; thence following the shoreline of West Bay and North Bay to a point  $35^\circ 02' 09''$  N -  $76^\circ 21' 53''$  W; thence  $317^\circ$  (M) to the beginning point.
- (ii) In West Bay bound by a line beginning at a point on shore  $35^\circ 03' 34''$  N -  $76^\circ 26' 24''$  W, running  $033^\circ$  (M) 100 yards to a point  $35^\circ 03' 38''$  N -  $76^\circ 26' 23''$  W; thence parallel to the shoreline no more than 100 yards from shore to a point  $35^\circ 00' 06''$  N -  $76^\circ 25' 24''$  W, running  $278^\circ$  (M) to a point on shore  $35^\circ 00' 06''$  N -  $76^\circ 25' 28''$  W.
- (iii) In West Bay bound by a line beginning at a point  $35^\circ 00' 06''$  N -  $76^\circ 25' 28''$  W, running  $098^\circ$  (M) 500 yards to a point  $35^\circ 00' 06''$  N -  $76^\circ 25' 12''$  W; thence  $171^\circ$  (M) 2800 yards to a point  $34^\circ 58' 45''$  N -  $76^\circ 24' 42''$  W; thence  $270^\circ$  (M) 1400 yards to a point on shore  $34^\circ 58' 39''$  N -  $76^\circ 25' 22''$  W.

**(FF) (ff)** In West Thorofare Bay and Merkle Bay south and southeast of a line beginning at a point in West Bay at Tump Point  $34^\circ 58' 42''$  N -  $76^\circ 22' 49''$  W; thence southwest  $258^\circ$  (M) to Marker F1 R15 ft. 3M 8 WB; thence southwest  $203^\circ$  (M) to Long Bay Point  $34^\circ 57' 52''$  N -  $76^\circ 24' 12''$  W.

**(GG) (gg)** In Long Bay:

- (i) In that area bound by a line beginning at a point on the south side of Stump Bay in Long Bay  $34^\circ 57' 13''$  N -  $76^\circ 27' 12''$  W; running northeast  $077^\circ$  (M) across Stump Bay to a point  $34^\circ 57' 39''$  N -  $76^\circ 25' 51''$  W; thence  $032^\circ$  (M) to a point  $34^\circ 58' 39''$  N -  $76^\circ 25' 22''$  W, following the shoreline to the beginning point.

## PROPOSED RULES

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- (ii) Southwest of a line beginning on the west shore  $34^{\circ} 57' 13''$  N -  $76^{\circ} 27' 12''$  W, running  $134^{\circ}$  (M) to a point on the east shore at Swimming Point  $34^{\circ} 56' 46''$  N -  $76^{\circ} 26' 26''$  W.
- (iii) In the area bound by a line beginning at a point on shore at Swimming Point  $34^{\circ} 56' 46''$  N -  $76^{\circ} 26' 26''$  W, running  $314^{\circ}$  (M) 300 yards to a point  $34^{\circ} 56' 52''$  N -  $76^{\circ} 26' 33''$  W; thence parallel to the shoreline no more than 300 yards from shore to a point  $34^{\circ} 58' 03''$  N -  $76^{\circ} 24' 10''$  W; thence  $203^{\circ}$  (M) to Long Bay Point  $34^{\circ} 57' 52''$  N -  $76^{\circ} 24' 12''$  W.
- (HH) (4) Raccoon Island, on the northeast shore between a point on the northwest shore  $35^{\circ} 04' 27''$  N -  $76^{\circ} 26' 16''$  W and a point on the southwest shore  $35^{\circ} 04' 00''$  N -  $76^{\circ} 25' 33''$  W from the shoreline no more than 150 yards from shore; on the south and west shores, no more than 50 yards from the shoreline.
- (8) Core Sound, Back Sound and the Straits and their tributaries.
- (9) North River:
- (A) (4) In that area bound by a line beginning at a point on the shore on the east side of North River south of Goose Bay  $34^{\circ} 43' 35''$  N -  $76^{\circ} 34' 55''$  W; thence running  $252^{\circ}$  (M) to a point in the river  $34^{\circ} 43' 28''$  N -  $76^{\circ} 35' 14''$  W; thence running  $355^{\circ}$  (M) to a point in the river  $34^{\circ} 45' 20''$  N -  $76^{\circ} 35' 45''$  W; thence running  $060^{\circ}$  (M) to a point in the river  $34^{\circ} 45' 45''$  N -  $76^{\circ} 35' 04''$  W; thence running  $165^{\circ}$  (M) to a point on the shore at the mouth of South Leopard Creek  $34^{\circ} 45' 36''$  N -  $76^{\circ} 34' 59''$  W; thence with the shoreline to the point of beginning.
- (B) (4) In that area bound by a line beginning at a point on the west side of North River near Steep Point  $34^{\circ} 43' 40''$  N -  $76^{\circ} 37' 20''$  W; thence running  $040^{\circ}$  (M) to a point  $34^{\circ} 44' 35''$  N -  $76^{\circ} 36' 36''$  W; thence running  $291^{\circ}$  M 300 yards to a point  $34^{\circ} 44' 37''$  N -  $76^{\circ} 36' 45''$  W; thence running  $219^{\circ}$  (M) to a point  $34^{\circ} 44' 13''$  N -  $76^{\circ} 37' 05''$  W; thence running  $307^{\circ}$  (M) to a point  $34^{\circ} 44' 16''$  N -  $76^{\circ} 37' 12''$  W; thence running  $018^{\circ}$  (M) to a point  $34^{\circ} 45' 20''$  N -  $76^{\circ} 36' 56''$  W following the shoreline to the beginning point.
- (C) (4) In that area of the North River marshes bound by a line beginning at Red Flasher No. "6" running  $038^{\circ}$  (M) along the southeast side of Steep Point Channel through Red Day Marker No. "8" to a point  $34^{\circ} 44' 08''$  N -  $76^{\circ} 36' 52''$  W; thence  $125^{\circ}$  (M) to a point  $34^{\circ} 43' 48''$  N -  $76^{\circ} 36' 08''$  W; thence  $144^{\circ}$  (M) to a point  $34^{\circ} 43' 30''$  N -  $76^{\circ} 35' 47''$  W; thence  $188^{\circ}$  (M) to a point  $34^{\circ} 42' 23''$  N -  $76^{\circ} 35' 47''$  W; thence  $221^{\circ}$  (M) to Red Flasher No. "56"; thence  $278^{\circ}$  (M) to a point  $34^{\circ} 42' 14''$  N -  $76^{\circ} 36' 43''$  W; thence  $346^{\circ}$  (M) to a point  $34^{\circ} 42' 45''$  N -  $76^{\circ} 36' 58''$  W; thence  $008^{\circ}$  (M) to a point  $34^{\circ} 43' 14''$  N -  $76^{\circ} 36' 58''$  W; thence  $318^{\circ}$  (M) to the beginning point.
- (D) (4) In the area north of a line beginning on the east shore at  $34^{\circ} 46' 11''$  N -  $76^{\circ} 35' 13''$  W; thence running  $270^{\circ}$  (M) to a point on the west shore at  $34^{\circ} 46' 11''$  N -  $76^{\circ} 37' 01''$  W.
- (10) Newport River:
- (A) (4) In that area bound by a line beginning at a point on the south shore  $34^{\circ} 45' 30''$  N -  $76^{\circ} 43' 10''$  W; thence running  $026^{\circ}$  (M) to a point on the north shore of Newport River  $34^{\circ} 46' 33''$  N -  $76^{\circ} 42' 46''$  W; thence with the shoreline to Beacon No. 24 in Core Creek; thence south with the Intracoastal Waterway to a point near Newport Marshes  $34^{\circ} 44' 56''$  N -  $76^{\circ} 45' 38''$  W; thence  $274^{\circ}$  (M) to Crab Point  $34^{\circ} 44' 54''$  N -  $76^{\circ} 42' 12''$  W; thence with the shoreline to the beginning point.
- (B) (4) In that area bound by a line beginning at a point on the shore on the south side of Russell's Creek  $34^{\circ} 45' 28''$  N -  $76^{\circ} 39' 46''$  W running  $278^{\circ}$  (M) 1000 yards to Quick Flasher Beacon No. 29 in the Intracoastal Waterway; thence running  $173^{\circ}$  (M) 1700 yards with the shoal to a point  $34^{\circ} 44' 37''$  N -  $76^{\circ} 40' 06''$  W; thence  $195^{\circ}$  (M) 1050 yards to a point on Gallant Point  $34^{\circ} 44' 06''$  N -  $76^{\circ} 40' 11''$  W; thence east and north with the shoreline to the beginning point.
- (C) (4) In the mouth of Harlowe Creek north of a line beginning at a point near White Rock  $34^{\circ} 46' 28''$  N -  $76^{\circ} 43' 28''$  W, running  $089^{\circ}$  (M) to a point  $34^{\circ} 46' 33''$  N -  $76^{\circ} 42' 46''$  W.
- (11) Bogue Sound:
- (A) (4) In that area bound by a line beginning at a point  $34^{\circ} 42' 16''$  N -  $76^{\circ} 49' 24''$  W on the south shore of Bogue Sound (locally known as McGinnis Point) running  $008^{\circ}$  (M) to a point in Bogue Sound  $34^{\circ} 43' 12''$  N -  $76^{\circ} 49' 24''$  W thence running  $099^{\circ}$  (M) to Atlantic Beach Bridge  $34^{\circ} 43' 08''$  N -  $76^{\circ} 44' 12''$  W;

thence  $119^{\circ}$  (M) to a point on the shore at Tar Landing Bay  $34^{\circ} 42' 30''$  N -  $76^{\circ} 42' 12''$  W; thence  $191^{\circ}$  (M) to a point on Bogue Banks  $34^{\circ} 42' 00''$  N -  $76^{\circ} 42' 15''$  W; thence with the shoreline to the beginning point.

(B) (+) In that area north of the Intracoastal Waterway beginning at the Atlantic Beach Bridge and running parallel with the Intracoastal Waterway to Channel Marker (Beacon) No. 39 at Bogue (Guthrie Point).

(C) (+) In that area on the north side of the Intracoastal Waterway from the Old Ferry Channel to the Highway 58 bridge.

(12) Designated primary nursery areas in all coastal fishing waters which are listed in 15A NCAC 3R .0003, except Burton Creek off Lower Broad Creek in Pamlico County.

(13) West and south of the Highway 58 Bridge at Emerald Isle from May 1 through October 31 in areas and during such times as the Fisheries Director shall designate by proclamation.

(b) It is unlawful to use pots from May 1 through October 31 in the areas described in this Paragraph except in accordance with 15A NCAC 3J .0301 (a)(2):

(1) In Long Shoal River north of a line beginning at Pingleton Point on the west shore  $35^{\circ} 34' 32''$  N -  $75^{\circ} 52' 54''$  W running  $102^{\circ}$  (M) to a point on the east shore  $35^{\circ} 34' 28''$  N -  $75^{\circ} 51' 00''$  W.

(2) In Wysocking Bay:

(A) Bound by a line beginning at a point on the south shore of Lone Tree Creek  $35^{\circ} 25' 05''$  N -  $76^{\circ} 02' 05''$  W running  $239^{\circ}$  (M) 1000 yards to a point  $35^{\circ} 24' 46''$  N -  $76^{\circ} 02' 32''$  W; thence  $336^{\circ}$  (M) 2200 yards to a point  $35^{\circ} 25' 42''$  N -  $76^{\circ} 03' 16''$  W; thence  $062^{\circ}$  (M) 750 yards to a point on shore  $35^{\circ} 25' 54''$  N -  $76^{\circ} 02' 54''$  W; thence following the shoreline and the Lone Tree Creek primary nursery area line to the beginning point.

(B) Bound by a line beginning at a point on the south shore at Mt. Pleasant Bay  $35^{\circ} 23' 07''$  N -  $76^{\circ} 04' 12''$  W, running  $083^{\circ}$  (M) 1200 yards to a point  $35^{\circ} 23' 17''$  N -  $76^{\circ} 03' 32''$  W; thence  $023^{\circ}$  (M) 2400 yards to a point  $35^{\circ} 24' 35''$  N -  $76^{\circ} 04' 00''$  W; thence  $299^{\circ}$  (M) 1100 yards to a point on shore  $35^{\circ} 24' 38''$  N -  $76^{\circ} 04' 48''$  W; thence following the shoreline and the Browns Island and Mt. Pleasant Bay primary nursery area line to the beginning

point; except pots may be set no more than 50 yards from the shoreline.

(3) In Juniper Bay bound by a line beginning at a point on Juniper Bay Point  $35^{\circ} 20' 18''$  N -  $76^{\circ} 13' 22''$  W running  $275^{\circ}$  (M) 2300 yards to a point  $35^{\circ} 20' 15''$  N -  $76^{\circ} 14' 45''$  W; thence  $007^{\circ}$  (M) 2100 yards to Daymarker No. 3; thence  $040^{\circ}$  (M) 1100 yards to a point on shore  $35^{\circ} 21' 45''$  N -  $76^{\circ} 14' 24''$  W; thence following the shoreline and the Buck Creek primary nursery area line to the beginning point.

(4) In that area bound by a line beginning at Beacon No. 1 at the mouth of Deep Cove running  $314^{\circ}$  (M) 1400 yards to a point on shore  $35^{\circ} 20' 12''$  N -  $76^{\circ} 24' 18''$  W; thence  $206^{\circ}$  (M) 3250 yards to a point  $35^{\circ} 18' 40''$  N -  $76^{\circ} 24' 54''$  W; thence  $128^{\circ}$  (M) 2000 yards to a point  $35^{\circ} 18' 11''$  N -  $76^{\circ} 23' 51''$  W; thence  $015^{\circ}$  (M) through the "Dope Boat" Beacon 3250 yards to the beginning point.

(5) In Rose Bay bound by a line beginning at a point southwest of Swan Point  $35^{\circ} 22' 56''$  N -  $76^{\circ} 23' 39''$  W running  $288^{\circ}$  (M) 1500 yards to a point on shore  $35^{\circ} 24' 03''$  N -  $76^{\circ} 24' 33''$  W; thence  $162^{\circ}$  (M) 1650 yards to a point  $35^{\circ} 23' 19''$  N -  $76^{\circ} 24' 04''$  W; thence  $084^{\circ}$  (M) 1350 yards to a point on shore  $35^{\circ} 23' 29''$  N -  $76^{\circ} 23' 17''$  W; thence following the shoreline to the beginning point.

(6) In Spencer Bay bound by a line beginning at a point on shore at Willow Point  $35^{\circ} 22' 26''$  N -  $76^{\circ} 28' 00''$  W running  $059^{\circ}$  (M) 1700 yards to a point  $35^{\circ} 22' 57''$  N -  $76^{\circ} 27' 13''$  W; thence  $317^{\circ}$  (M) 1500 yards to a point  $35^{\circ} 23' 25''$  N -  $76^{\circ} 27' 57''$  W; thence  $243^{\circ}$  (M) 1300 yards to a point on shore  $35^{\circ} 23' 02''$  N -  $76^{\circ} 28' 35''$  W; thence following the shoreline to the beginning point.

(7) In Pungo River:

(A) Beginning at point on shore north of Grassy Point  $35^{\circ} 25' 41''$  N -  $76^{\circ} 35' 22''$  W running  $092^{\circ}$  (M) to a point near Beacon No. 3  $35^{\circ} 25' 44''$  N -  $76^{\circ} 34' 46''$  W; thence running  $338^{\circ}$  (M) to a point  $35^{\circ} 26' 17''$  N -  $76^{\circ} 35' 10''$  W; thence running  $230^{\circ}$  (M) to a point on shore  $35^{\circ} 25' 50''$  N -  $76^{\circ} 35' 37''$  W.

(B) Beginning at a point on shore south of Jordan Creek  $35^{\circ} 27' 00''$  N -  $76^{\circ} 36' 20''$  W running  $134^{\circ}$  (M) to a point  $35^{\circ} 26' 54''$  N -  $76^{\circ} 36' 09''$  W; thence running  $134^{\circ}$  (M) to a point  $35^{\circ} 26' 54''$  N -  $76^{\circ} 36' 09''$  W; thence running  $020^{\circ}$  (M) to a point  $35^{\circ} 27' 23''$  N -  $76^{\circ} 36' 02''$  W; thence

- running  $257^\circ$  (M) to a point on shore  $35^\circ 27' 14''$  N -  $76^\circ 36' 26''$  W.
- (C) Beginning at a point on shore south of Sandy Point  $35^\circ 26' 38''$  N -  $76^\circ 33' 34''$  W; thence  $267^\circ$  (M) to a point  $35^\circ 26' 35''$  N -  $76^\circ 33' 50''$  W; thence running  $143^\circ$  (M) to a point on shore  $35^\circ 26' 05''$  N -  $76^\circ 33' 13''$  W; thence running  $356^\circ$  (M) to a point on shore  $35^\circ 26' 20''$  N -  $76^\circ 33' 18''$  W.
- (D) Beginning at a point on shore south of Fortescue Creek  $35^\circ 25' 36''$  N -  $76^\circ 32' 01''$  W running  $325^\circ$  (M) to a point off Fort Creek  $35^\circ 25' 44''$  N -  $76^\circ 32' 09''$  W; thence running  $202^\circ$  (M) to a point  $35^\circ 25' 17''$  N -  $76^\circ 32' 18''$  W; thence running  $078^\circ$  (M) to a point on shore  $35^\circ 25' 20''$  N -  $76^\circ 32' 01''$  W.
- (8) In Pamlico River:
- (A) Beginning at a point  $35^\circ 19' 55''$  N -  $76^\circ 33' 56''$  W; thence running  $011^\circ$  (M) to a point  $35^\circ 20' 12''$  N -  $76^\circ 33' 55''$  W; thence running  $288^\circ$  (M) to a point  $35^\circ 20' 19''$  N -  $76^\circ 34' 35''$  W; thence running  $184^\circ$  (M) to a point  $35^\circ 20' 00''$  N -  $76^\circ 34' 34''$  W; thence running  $104^\circ$  (M) to the beginning point  $35^\circ 19' 55''$  N -  $76^\circ 33' 56''$  W.
- (B) Beginning at a point 400 yards from shore  $35^\circ 19' 49''$  N -  $76^\circ 32' 59''$  W; thence running  $018^\circ$  (M) to a point  $35^\circ 20' 06''$  N -  $76^\circ 32' 54''$  W; thence running  $287^\circ$  (M) to a point  $35^\circ 20' 27''$  N -  $76^\circ 33' 27''$  W; thence running  $188^\circ$  (M) to a point  $35^\circ 19' 50''$  N -  $76^\circ 33' 27''$  W; thence returning to the beginning point  $35^\circ 19' 49''$  N -  $76^\circ 32' 59''$  W.
- (C) Beginning at a point 100 yards from shore  $35^\circ 19' 02''$  N -  $76^\circ 29' 24''$  W; thence running  $038^\circ$  (M) to a point  $35^\circ 19' 24''$  N -  $76^\circ 29' 09''$  W; thence running  $288^\circ$  (M) to a point  $35^\circ 19' 30''$  N -  $76^\circ 30' 00''$  W; thence running  $182^\circ$  (M) to a point  $35^\circ 19' 02''$  N -  $76^\circ 29' 59''$  W; thence running  $099^\circ$  (M) to the beginning point  $35^\circ 19' 02''$  N -  $76^\circ 29' 24''$  W.
- (9) In that area north of the target ship beginning at a point  $35^\circ 14' 25''$  N -  $76^\circ 27' 05''$  W; running  $071^\circ$  (M) 2000 yards to a point  $35^\circ 14' 52''$  N -  $76^\circ 26' 00''$  W; thence  $168^\circ$  (M) 1800 yards to a point  $35^\circ 14' 03''$  N -  $76^\circ 25' 39''$  W; thence  $273^\circ$  (M) 2000 yards to a point  $35^\circ 13' 57''$  N -  $76^\circ 26' 55''$  W; thence  $350^\circ$  (M) 1000 yards to the beginning point.
- (10) Off Middle Bay: Beginning at a point on shore on Middle Bay Point  $35^\circ 14' 48''$  N -  $76^\circ 28' 41''$  W; thence running  $131^\circ$  (M) 3550 yards to a point  $35^\circ 13' 51''$  N -  $76^\circ 26' 53''$  W; thence running  $214^\circ$  (M) 2600 yards to a point  $35^\circ 12' 43''$  N -  $76^\circ 27' 34''$  W; thence running  $291^\circ$  (M) to Sow Island; thence running  $310^\circ$  (M) to a point on Sow Island Point  $35^\circ 13' 09''$  N -  $76^\circ 29' 27''$  W; thence following the shoreline to a point on Big Fishing Point  $35^\circ 14' 03''$  N -  $76^\circ 29' 53''$  W; thence running  $008^\circ$  (M) to a point  $35^\circ 14' 35''$  N -  $76^\circ 29' 53''$  W; thence following the shoreline back to the beginning point  $35^\circ 14' 48''$  N -  $76^\circ 28' 41''$  W.
- (11) In Jones Bay:
- (A) Beginning at a point on shore north of Boar Point  $35^\circ 12' 23''$  N -  $76^\circ 31' 16''$  W; thence running  $036^\circ$  (M) to a point  $35^\circ 12' 48''$  N -  $76^\circ 31' 00''$  W; thence running  $286^\circ$  (M) to a point  $35^\circ 12' 52''$  N -  $76^\circ 31' 47''$  W; thence running  $231^\circ$  (M) to a point on shore  $35^\circ 12' 37''$  N -  $76^\circ 32' 00''$  W; thence following the shoreline back to the beginning point  $35^\circ 12' 23''$  N -  $76^\circ 31' 16''$  W.
- (B) Beginning at a point at Boar Point  $35^\circ 12' 07''$  N -  $76^\circ 31' 04''$  W; thence running  $106^\circ$  (M) 2000 yards to Green Flasher No. 5; thence  $200^\circ$  (M) 2200 yards to a point  $35^\circ 10' 56''$  N -  $76^\circ 30' 10''$  W; thence  $282^\circ$  (M) 2350 yards to Bay Point  $35^\circ 11' 02''$  N -  $76^\circ 31' 35''$  W; thence following the shoreline to the beginning point  $35^\circ 12' 07''$  N -  $76^\circ 31' 04''$  W.
- (12) In an area at the mouth of Bay River bound by a line beginning at a point on Maw Point  $35^\circ 08' 55''$  N -  $76^\circ 32' 10''$  W running  $020^\circ$  (M) 1600 yards to Daymarker No. 1; thence  $134^\circ$  (M) 3800 yards to Neuse River Junction Quick Flasher; thence  $236^\circ$  (M) 1700 yards to Red Day Marker No. 2PA; thence  $314^\circ$  (M) 2750 yards to the beginning point.
- (13) In Bay River:
- (A) Beginning at a point on shore  $35^\circ 10' 24''$  N -  $76^\circ 34' 00''$  W; thence running  $051^\circ$  (M) to Beacon No. 3 in Bay River  $35^\circ 10' 47''$  N -  $76^\circ 33' 30''$  W; thence running  $273^\circ$  (M) to a point  $35^\circ 10' 41''$  N -  $76^\circ 34' 41''$  W; thence running  $188^\circ$  (M) to a point on shore  $35^\circ 10' 27''$  N -  $76^\circ 34' 42''$  W; thence following the shoreline to the beginning point  $35^\circ 10' 24''$  N -  $76^\circ 34' 00''$  W.
- (B) Beginning at a point on shore at Moore Creek  $35^\circ 08' 51''$  N -  $76^\circ 40' 14''$  W; running  $296^\circ$  (M) to a point  $35^\circ 08' 59''$  N -  $76^\circ 50' 19''$  W; thence no more than 150 yards from shore to a point  $35^\circ 09'$

- 43° N - 76° 40' 06" W; thence running 134° (M) to a point on shore west of Bell Point 35° 09' 40" N - 76° 40' 00" W.
- (14) In Neuse River:
- (A) Beginning at a point on shore north of Swan Creek 35° 07' 17" N - 76° 33' 26" W running 115° (M) to a point near the 6 foot depth contour 35° 07' 15" N - 76° 33' 16" W; thence running 074° (M) to Beacon No. 2 at Maw Point Shoal; thence running 294° (M) to a point on shore 35° 08' 30" N - 76° 32' 36" W; thence following the shoreline to the beginning point 35° 07' 17" N - 76° 33' 26" W.
  - (B) Beginning at a point on shore north of Gum Thicket Creek 35° 04' 40" N - 76° 35' 38" W; thence running 129° (M) to a point 35° 04' 12" N - 76° 34' 37" W; thence running 355° (M) to Beacon No. 1 in Broad Creek; thence running the six foot contour line to Green Marker No. 3.
  - (C) Beginning at a point on the eastern tip of Cockle Point 35° 03' 20" N - 76° 38' 27" W; thence running 100° (M) to a point 35° 03' 18" N - 76° 37' 53" W; thence running 005° (M) to a point on shore 35° 03' 38" N - 76° 37' 54" W; thence following the primary nursery area line to the beginning point 35° 03' 20" N - 76° 38' 27" W.
  - (D) Beginning at a point on shore on the eastern side of the MBYB channel 34° 58' 16" N - 76° 49' 05" W running 186° (M) to a point on 6 foot depth contour 34° 58' 07" N - 76° 46' 05" W; thence following the 6 foot depth contour to a point 34° 58' 24" N - 76° 46' 34" W; thence running 351° (M) to a point on shore 34° 58' 32" N - 76° 46' 38" W.
  - (E) Beginning at a point on shore at Beards Creek 35° 00' 08" N - 76° 52' 13" W; thence running 209° (M) to a point 34° 59' 52" N - 76° 52' 20" W; thence running along the 6 foot depth contour to a point 34° 59' 25" N - 76° 51' 14" W; thence running 043° (M) to a point on shore at Mill Creek 34° 59' 34" N - 76° 51' 06" W.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

#### .0008 MECHANICAL METHODS PROHIBITED

(a) It is unlawful to use mechanical methods to take oysters in Pamlico Sound, within the area bounded by a line beginning at a point on the north side of Swash Inlet 34° 58' 50" N - 76° 09' 13" W; thence running 272° (M) 5,420 yards to a point in Wainwright Channel 34° 59' 30" N -

76° 12' 22" W immediately east of the northern tip of Wainwright Island; thence 019° (M) 2,000 yards to red 4 second interval flashing beacon "2CS" 35° 00' 16" N - 76° 12' 12" W; thence 033° (M) 2,900 yards to 4 second interval flashing beacon "HL" 35° 01' 35" N - 76° 11' 27" W; thence 043° (M) 14,450 yards to a point in Pamlico Sound 35° 07' 06" N - 76° 06' 54" W; from which point green 4 second interval flashing beacon "3" on Royal Shoal bears 005° (M) 6,000 yards; green 6 second interval flashing beacon "5" on Royal Shoal bears 325° (M) 6,220 yards; and a yellow 6 second interval flashing beacon on Royal Shoal bears 257° (M) 3,000 yards; thence 078° (M) 7,800 yards to green 2.5 second interval flashing beacon "9" 35° 08' 26" N - 76° 02' 30" W in Nine Foot Shoal Channel; thence 067° (M) 3,640 yards to red 4 second interval flashing beacon "14BF" 35° 09' 21" N - 76° 00' 39" W in Big Foot Slough Channel; thence 078° (M) 26,260 yards to a quick-flashing beacon 35° 14' 00" N - 75° 45' 50" W; southwest of Oliver Reef; thence 033° (M) 6,100 yards to 2.5 second interval flashing beacon "1" 35° 16' 46" N - 75° 44' 16" W in Rollinson Channel; thence 079° (M) 13,920 yards to red 4 second interval flashing beacon "2" 35° 19' 02" N - 75° 36' 19" W in Cape Channel; thence 038° (M) 8,800 yards to green 4 second interval flashing beacon "1" at 35° 22' 48" N - 75° 33' 36" W in Avon Channel; thence 027° (M) 11,900 yards to a point on Gull Island at 35° 28' 27" N - 75° 31' 21" W; thence 012° (M) 15,400 to 4 second interval flashing beacon "ICC" 35° 36' 00" N - 75° 31' 12" W at Chicamacomico Channel; thence 331° (M) 8,600 yards to a point in Pamlico Sound at 35° 39' 21" N - 75° 34' 24" W; thence 013° (M) 7,250 yards to a point in Pamlico Sound at 35° 42' 57" N - 75° 34' 09" W; thence 045° (M) 7,200 yards to a point on the shore of Hatteras Island at 35° 45' 54" N - 75° 31' 06" W; thence running southward with the shoreline of Hatteras Island to a point 35° 11' 30" N - 75° 44' 48" W on the southwest end of Hatteras Island; thence 269° (M) 2,380 yards across Hatteras Inlet to a point 35° 11' 18" N - 75° 46' 15" W on the northeast end of Ocracoke Island; thence southwest with the shoreline of Ocracoke Island to a point 35° 03' 54" N - 76° 00' 54" W on the southwest end of Ocracoke Island; thence 268° (M) 2,220 yards across Ocracoke Inlet to a point 35° 03' 42" N - 76° 02' 15" W on the northeast end of Portsmouth Island; thence running southwest with the shoreline of Portsmouth Island and Core Banks to a point on the north side of Swash Inlet 34° 58' 50" N - 76° 09' 13" W, to the point of the beginning, except on private bottom by

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permit. This closure area will be in effect until October 1, 1993.

(b) It is unlawful to use mechanical methods to take oysters in Core Sound and its tributaries southwest of a line beginning at a point on the north side of Swash Inlet  $34^{\circ} 58' 50''$  N -  $76^{\circ} 09' 13''$  W, and running  $292^{\circ}$  (M) to a point off Hog Island Reef  $35^{\circ} 00' 06''$  N -  $76^{\circ} 14' 52''$  W and in Back Bay, North Bay, the Straits, Back Sound, North River, Newport River, Bogue Sound and White Oak River, except on private bottom by permit.

(c) It is unlawful to use mechanical methods to take oysters in any of the coastal waters of Onslow, Pender, New Hanover, and Brunswick Counties, following areas: Back Bay at Hog Island, North Bay, the Straits, Back Sound, North River, Newport River, Bogue Sound, White Oak River, New River, Lockwoods Folly River, Shallotte River, and Saucapon Creek (Brunswick County), except on private bottom by permit.

*Statutory Authority G.S. 113-134; 113-182; 143B-289.4.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10A .1001; 10C .0305; 10F .0307, .0323, .0355.*

*The proposed effective date of this action is October 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on June 30, 1992 at the Archdale Building, Room 386, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

### **Reasons for Proposed Actions:**

**15A NCAC 10A .1001 - To allow the issuance of warning tickets for two additional offenses.**

**15A NCAC 10C .0305 - To provide notice that the Executive Director may suspend or extend the striped bass season by proclamation.**

**15A NCAC 10F .0307 - To reduce speed in high-traffic boating areas.**

**15A NCAC 10F .0323 - To protect swimmers in the vicinity of the Lake James Campground from speeding boats.**

**15A NCAC 10F .0355 - To reduce speed in high-traffic boating areas.**

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from June 15, 1992 to July 15, 1992. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

## **CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

### **SUBCHAPTER 10A - WILDLIFE RESOURCES COMMISSION**

#### **SECTION .1000 - WARNING TICKETS**

##### **.1001 PARTICULAR OFFENSES**

(a) **Warning Tickets Prohibited.** Wildlife Enforcement Officers shall not issue warning tickets for the following offenses, classes of offenses or offenses committed in a particular manner:

- (1) second offense of a similar charge;
- (2) hunting, fishing, or trapping without a license, except as listed in this Rule;
- (3) exceeding bag or creel limits;
- (4) taking fish or wildlife by use of poison, explosives, or electricity;
- (5) hunting, fishing, or trapping in closed season;
- (6) hunting on Game Lands during closed days;
- (7) firelighting deer;
- (8) unlawful taking or possession of antlerless deer;
- (9) unlawful taking or possession of bear or wild turkey;
- (10) unlawful purchase or sale of wildlife;
- (11) unlawful taking of fox; or
- (12) taking wildlife with the aid of or from a motor vehicle or boat under power or while in motion.

(b) **Warning Tickets Permitted.** In accordance with the conditions provided in G.S. 113-140(c) and where there is a contemporaneous occurrence of more than three violations of the motorboat statutes or administrative rules, Wildlife Enforcement Officers may issue a citation on the two most serious violations and a warning ticket on the lesser violation(s). In addition, Wildlife Enforcement Officers may issue warning tickets for the following offenses:

- (1) Boating Violations:

- (A) number missing, lack of contrast, not properly spaced or less than three inches in height;
  - (B) no validation decal affixed or incorrect placement;
  - (C) fire extinguisher not charged or non-approved;
  - (D) no fire extinguisher on boats with false bottoms not completely sealed to hull or filled with flotation material;
  - (E) failure to notify North Carolina Wildlife Resources Commission of change of address of boat owner;
  - (F) personal flotation device not Coast Guard approved;
  - (G) failure to display navigation lights when there is evidence that lights malfunctioned while underway;
  - (H) no sound device (on Class 1 boats only);
  - (I) muffler not adequate;
  - (J) loaded firearm on access area;
  - (K) parking on access area in other than designated parking area, provided traffic to ramp not impeded;
  - (L) motorboat registration expired ten days or less;
  - (M) no Type IV throwable personal flotation device on board, but other personal flotation device requirements met; or
  - (N) violation of no-wake speed zone when mitigating circumstances present.
- (2) License Violations:
- (A) persons under 16 hunting, trapping, or trout fishing without meeting statutory requirements;
  - (B) senior citizens hunting or fishing without valid license(s) (Senior citizens are those persons 65 years old or older);
  - (C) when it appears evident that the wrong license was purchased or issued by mistake;
  - (D) failure to carry required license or identification on person, if positive identification can be established;
  - (E) non-resident hunting, fishing, or trapping with resident license, if domicile is established, but not 60 days; ~~or~~
  - (F) hunting, fishing, or trapping on Game Lands or fishing in Designated Trout Waters that are not properly posted or have been posted for no more than 30 days; or
  - (G) persons who are 18 years or older or who do not reside with their parents, when such persons are taking wildlife upon their parent's land without a license

as required by G.S. 113-270.2,  
113-270.3(b) except for subdivision (5),  
113-270.5, 113-271, or 113-272.

- (3) Game Lands Violations:
- (A) camping on Game Lands in other than designated area; or
  - (B) possession of weapons readily available for use while on game land thoroughfare, during closed season.
- (4) Trapping Violations:
- (A) improper chain length at dry land sets;
  - (B) trap tag not legible;
  - (C) trap tag missing, but with a group of properly tagged traps;
  - (D) trap tag missing, but evidence that animal destroyed;
  - (E) improper jawsize;
  - (F) failure to comply with "offset" jaw requirement for traps with jaw spread of more than 5½ inches;
  - (G) failure to attend traps daily, during severe weather (ice, high water, heavy snow); or
  - (H) no written permission, but on right-of-way of public road.
- (5) Miscellaneous Violations:
- (A) allowing dogs, not under the control of the owner to chase deer during closed season;
  - (B) attempting to take deer with dogs, or allowing dogs to chase deer in restricted areas;
  - (C) using dogs to track wounded deer during primitive weapon season;
  - (D) failure to report big game kill to nearest cooperator agent, when game is tagged and subject is enroute to another agent;
  - (E) training dogs or permitting them to run unleashed on Game Lands west of I-95 during the period of April 1 through August 15;
  - (F) violation of newly adopted regulations, when not readily available to the public;
  - (G) violation of local laws, when information not available to the public;
  - (H) all permits (except for fox depredation permit);
  - (I) closed season, if misprinted in digest or suddenly changed;
  - (J) minor record violation (taxidermist); ~~or~~
  - (K) failure to put name and address on marker (trotline); or
  - (L) failure to put name and address on nets.
- (c) Special Consideration. Special consideration may be given in local areas where the offender is hunting or fishing out of his normal locality and is unfamiliar with the local law. Consideration may also be given for minor vio-

## ***PROPOSED RULES***

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lations on newly opened or established Game Lands and on reclassified or newly Designated Mountain Trout Waters. Special consideration

may be given to youthful offenders under 18 years of age.

*Statutory Authority G.S. 113-140.*

### **SUBCHAPTER 10C - INLAND FISHING REGULATIONS**

#### **SECTION .0300 - GAME FISH**

##### **.0305 OPEN SEASONS: CREEL AND SIZE LIMITS**

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout: Wild Trout Waters	4	7 in. (exc. 15)	All year (exc. 2)
Hatchery Sup- ported Trout Waters and undesignated waters	7	None	All year, except March 1 to 7:00 a.m. on first Saturday in April (excs. 2 & 3)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (excs. 9 & 10)	None (exc. 9)	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass: Largemouth	5 (exc. 10)	14 in. (excs. 4, 8 & 11)	ALL YEAR (exc. 13)
Smallmouth and Spotted	5 (exc. 10)	12 in. (excs. 4, 8 & 11)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spot- ted or Speckled)	None	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	None	14 in.	ALL YEAR
Striped Bass	8 aggregate	16 in.	ALL YEAR

**PROPOSED RULES**

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and their hybrids (Morone Hybrids)	(excs. 1 & 6)	(excs. 1, 6 & 12)	(excs. 6, & <u>16,</u> <u>and 18)</u>
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 5 & 14)	None (exc. 14)	ALL YEAR (exc. 5)
NONGAME FISHES	None (exc. 17)	None (exc. 17)	ALL YEAR (exc. 7)

(b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.
- (2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.
- (3) Under an agreement with Tennessee, the minimum size limit on trout in Calderwood Reservoir is seven inches.
- (4) Bass taken from streams designated as public mountain trout waters or from Calderwood Reservoir may be retained without restriction as to size limit.
- (5) On Mattamuskeet Lake, special federal regulations apply.
- (6) In the inland fishing waters of Cape Fear, Neuse, Pungo and Tar-Pamlico Rivers and their tributaries extending upstream to the first impoundment, the daily creel limit for striped bass and their hybrids is one fish and the minimum length limit is 18 inches. In the Roanoke River up to the first impoundment, from July 1 through March 31 and June 1 through June 30 the daily creel limit for stripped bass is one fish and the minimum length limit is 18 inches; from April 1 to May 31 the daily creel limit is three fish, no fish between the lengths of 22 inches and 27 inches may be retained, and the minimum length limit is 16 inches, except no fish may be retained in Roanoke River and its tributaries including Cashie, Middle and Eastmost rivers from May 1 to December 31, 1991.
- (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, in Reedy Creek Park lakes in Mecklenburg County, and in Currituck Sound and tributaries north of Wright Memorial Bridge; in North River and tributaries in Currituck and Camden Counties north of a line between Camden Point and the end of SR 1124. In and west of Madison, Buncombe, Henderson and Polk Counties the minimum size limit is 12 inches. In B. Everett Jordan Reservoir a minimum size limit of 16 inches, with no exception, applies to largemouth bass. In Falls of Neuse Reservoir, east of SR 1004, Sutton Lake and Tuckertown Lake no black bass between the lengths of 12 inches and 16 inches may be retained, and the minimum size limit for black bass is 16 inches, except that the daily creel may contain two black bass of less than 12 inches in length. In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass.
- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The creel limit for black bass and walleye taken from Calderwood Reservoir is 10.
- (11) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
  - (A) Cane Creek Lake in Union County; and
  - (B) Lake Thom-A-Lex in Davidson County.

- (12) In all impounded inland waters and their tributaries, except those waters described in Exceptions (I), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (13) In Cane Creek Reservoir (Orange County) the season for taking largemouth bass is closed.
- (14) In Lake Tillery, Falls Lake, Badin Lake, and Tuckertown Lake a daily creel limit of 20 fish and a minimum size limit of 8 inches apply to crappie.
- (15) In Slick Rock Creek the minimum size is 7 inches for brook trout and 10 inches for brown and rainbow trout.
- (16) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season is closed when adjacent joint or coastal fishing waters are closed to hook and line fishing for striped bass by the Marine Fisheries Commission.
- (17) The daily creel and length limits for channel, white, and blue catfish in designated urban lakes are provided for in 15A NCAC 10C .0401(d).
- (18) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

*Statutory Authority G.S. 113-134; 113-292; 113-304; 113-305.*

#### **SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY**

##### **SECTION .0300 - LOCAL WATER SAFETY REGULATIONS**

###### **.0307 CATAWBA: IREDELL: LINCOLN AND MECKLENBURG COUNTIES**

(a) Regulated Area. This Rule applies to Lake Norman which is located in the counties of Catawba, Iredell, Lincoln and Mecklenburg.

(b) Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked boat launching area, bridge, dock, pier, marina, boat storage structure, or boat service area on the waters of Lake Norman.

(c) Speed Limit Near Parks: No person shall operate a vessel greater than no-wake speed within 50 yards of the following parks as designated by appropriate markers:

- (1) Jetton Park;
- (2) Brown's Cove Park.

(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked swimming area on the waters of Lake Norman.

(e) Placement and Maintenance of Markers. Each of the boards of commissioners of the above-named counties is designated a suitable agency for placement and maintenance of navigational aids and regulatory markers of a general nature on the waters of Lake Norman within the boundaries of each respective county. Provided the said counties exercise their supervisory responsibility, they may delegate the actual process of placement or maintenance of such markers to

some other agency, corporation, group, or individual.

With regard to marking the restricted zones described above, markers may be placed and maintained by the individuals using the protected areas and facilities in accordance with the Uniform Waterway Marking System and supplementary standards as set forth in Rule .0301(g)(1) to (8) of this Section.

(f) Markers Reflecting County Regulation. Where any marker conforming or required to conform to the uniform system is placed in or near Lake Norman advising the public of the provisions of any local act or of county ordinances made under the authority of any local act and:

- (1) Such provisions are not within the enforcement jurisdiction of the Commission; and
- (2) The Commission has not passed regulations of an identical or closely similar nature to that of the provisions in question,

such marker to be deemed in conformity with the uniform system must bear on it the legend "County Regulation" at such a place or at such places as needed to indicate which provisions are not enforceable by the Commission as a matter of state law.

(g) Miscellaneous Restrictions. In addition to the acts prohibited by Paragraph (f) of Rule .0301 of this Section, it is unlawful to commit any such act with respect to any marker placed or erected under the authority of Chapter 1205 of the 1965 Session Laws of the State of North Carolina by any one of the above named counties or by them jointly.

*Statutory Authority G.S. 75A-3; 75A-15; S.L. 1965, Ch. 1205.*

**.0323 BURKE COUNTY**

(a) Regulated Areas. This Rule applies only to the following lakes or portions of lakes which lie within the boundaries of Burke County:

- (1) Lake Hickory;
- (2) Lake James;
- (3) Lake Rhodhiss.

(b) Speed Limit. ~~Near Ramps~~. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked public boat launching ramp, bridge, marina, boat storage structure, boat service area or pier while on the regulated areas described in Paragraph (a) of this Rule or within 50 yards of any designated private boat launching ramp around the Holiday Shores Subdivision on Lake James or within 50 yards of the Lake James Campground.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.

(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule including the area within 50 yards of any designated private boat dock around the Holiday Shores Subdivision on Lake James.

(e) Placement and Maintenance of Markers. The Board of Commissioners of Burke County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, if applicable. With regard to marking the regulated areas described in Paragraph (a) of this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

*Statutory Authority G.S. 75A-3; 75A-15.*

**.0355 PERQUIMANS COUNTY**

(a) Regulated Area. Areas. This Rule applies to the canals of Holiday Island, following waters:

- (1) the canals of Holiday Island;
- (2) within 50 yards of the Hertford City Boat Ramp;

(3) within 75 yards of the Perquimans River Bridge on U.S. 17 Business also known as the Hertford S-Shaped Bridge.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Perquimans County is designated a suitable agency for placement and maintenance of markers implementing this Rule.

*Statutory Authority G.S. 75A-3; 75A-15.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10C .0205 with changes from the proposed text noticed in the Register, Volume 6, Issue 18, pages 1353-1361.*

*The proposed effective date of this action is October 1, 1992.*

*A public hearing will be conducted at 7:00 p.m. on July 13, 1992 at the Fine Arts Center, Franklin High School, Franklin, North Carolina. Public hearings on this Rule were previously held on the dates and locations noticed in the Register, Volume 6, Issue 18, page 1345.*

*Reason for Proposed Action: To appropriately designate public mountain trout waters.*

*Comment Procedures: Interested persons may present their views in writing from June 15, 1992 to July 15, 1992. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10C - INLAND FISHING REGULATIONS**

**SECTION .0200 - GENERAL REGULATIONS**

**.0205 PUBLIC MOUNTAIN TROUT WATERS**

(a) Designation of Public Mountain Trout Waters. On game lands located in western North Carolina certain waters are classified and designated as public mountain trout waters and clas-

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sified as wild trout waters or hatchery supported waters. For specific classifications see Subparagraphs (1) and (2) of Paragraph (a) of this Rule. Other streams, portions of streams, and bodies of water which are not located on game lands are designated within this Rule as public mountain trout waters and are classified as hatchery supported trout waters or wild trout waters. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

(1) Hatchery Supported Trout Waters. The hatchery supported public mountain trout waters are designated in this Subparagraph under the counties where located. Where specific watercourses are listed indentation indicates the watercourse named is tributary to the next preceding watercourse named and not so indented. The designation applies to the entire watercourse or impoundment named, including tributaries when on game lands, except as otherwise indicated in parentheses following the name. Other clarifying information may also be included parenthetically:

(A) Alleghany County:

New River (not trout water)  
Little River (Whitehead to McCann Dam)  
Crab Creek  
Brush Creek (except where posted against trespass)  
Little Pine Creek  
Big Pine Creek  
Little Glade Creek  
Laurel Branch  
Big Glade Creek  
Bledsoe Creek  
Pine Swamp Creek  
Waterfalls Creek (South Fork Little River) (except where posted against trespass)  
South Fork New River (not trout water)  
Prather Creek  
Cranberry Creek  
Piney Fork  
Meadow Fork  
Yadkin River (not trout water)  
Roaring River (not trout water)  
East Prong Roaring River (that portion on Stone Mountain State Park) Delayed Harvest Waters regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.  
Stone Mountain Creek

(B) Ashe County:

New River (not trout waters)

North Fork New River (Watauga Co. line to Sharp Dam)

Helton Creek (Virginia State line to New River)

Big Horse Creek (SR 1361 bridge to Tuckerdale)

Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)

Big Laurel Creek

Three Top Creek (portion not on game lands)

Hoskins Fork (Watauga County line to North Fork New River)

South Fork New River (not trout waters)

Cranberry Creek (Alleghany County line to South Fork New River)

Nathans Creek

Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)

Trout Lake

Roan Creek

North Beaver Creek

South Beaver Creek (headwaters to Ashe Lake)

Pine Swamp Creek (all forks)

Old Fields Creek

Call Creek (West Prong Old Fields Creek)

Mill Creek (except where posted against trespass)

(C) Avery County:

Nolichucky River (not trout waters)

North Toe River (headwaters to Mitchell County line, except where posted against trespass)

Plumtree Creek

Roaring Creek

Squirrel Creek

~~Horse Creek~~

Elk River (SR 1306 crossing to Tennessee State line)

Elk River (Lees-McRae College boundary line to NC 194 bridge at Heaton, except where posted against trespass)

~~Cranberry Creek~~

Catawba River (not trout water)

Johns River (not trout water)

Wilson Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (4) of Paragraph (a) of this Rule]

~~Rockhouse Creek~~

Gragg Prong

Webb Prong

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- Andrews Creek Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]
- Carey Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]
- Boyd Coffey Lake  
Archie Coffey Lake
- Linville River (Sloop Dam to Blue Ridge Parkway boundary line)
- Milltimber Creek
- Linville River [Land Harbor line (below dam) to Ben Aldridge line, except Bob Miller property]
- (D) Buncombe County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~
- French Broad River (not trout water)  
Big Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)  
Dillingham Creek (Corner Rock Creek to Big Ivy Creek)  
Stony Creek  
Mineral Creek  
Carter Creek (portion not on game lands)  
Corner Rock Creek
- Reems Creek (Woodfin Watershed dam to US 19-23 bridge, except where posted against trespass)
- Swannanoa River (SR 2702 bridge near Ridgecrest to Sayles Bleachery in Asheville, except where posted against trespass)
- Bent Creek  
Lake Powhatan  
Cane Creek (headwaters to SR 3138 bridge)
- (E) Burke County:  
Catawba River (not trout water)  
South Fork Catawba River (not trout water)  
Henry Fork (lower Morganton watershed line downstream to SR 1919 at Ivy Creek)  
Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.
- Johns River (not trout water)  
Parks Creek (not trout water)  
Carroll Creek (game lands above SR 1405)
- Linville River (first bridge on SR 1223 below Lake James powerhouse to Muddy Creek)
- (F) Caldwell County:  
Catawba River (not trout water)  
Johns River (not trout water)  
Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)  
Estes Mill Creek (not trout water)  
Thorpe Creek (falls to NC 90 bridge)  
Mulberry Creek (not trout water)  
Boone Fork (not Hatchery Supported trout water)  
Boone Fork Pond
- (G) Cherokee County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~
- Hiwassee River (not trout water)  
Shuler Creek (headwaters to Tennessee line, except where posted against trespass)  
North Shoal Creek (Crane Creek) (headwaters to SR 1325)  
Persimmon Creek  
Davis Creek  
Bald Creek  
Beaver Dam Creek (headwaters to SR 1326 bridge)  
Valley River  
Hyatt Creek  
Webb Creek  
Junaluska Creek (bridge at U.S. Forest Service road 440, Section No. 4, to Valley River)
- (H) Clay County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~
- Hiwassee River (not trout water)  
Fires Creek (bear sanctuary line to SR 1300)  
Tusquitee Creek (headwaters to lower SR 1300 bridge)  
Tuni Creek  
Chatuge Lake (not trout water)  
Shooting Creek (headwaters to US 64 bridge at SR 1338)  
Hothouse Branch  
Vineyard Creek
- (I) Graham County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~
- Little Tennessee River (not trout water)  
Calderwood Reservoir (Cheoah Dam to Tennessee State line)

## PROPOSED RULES

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Cheoah River (not trout water)

Yellow Creek

West Buffalo Creek

Santeelah Reservoir (not trout water)

Santeelah Creek (Johns Branch to mouth)

Huffman Creek (Little Buffalo Creek)

Squalla Creek

South Fork Squalla Creek

Big Snowbird Creek (old railroad junction to mouth)

Mountain Creek (~~headwaters game lands boundary~~ to SR 1138 bridge)

Long Creek (~~headwaters to lower bridge on SR 1127~~) (portion not on game lands)

Tulula Creek (headwaters to lower bridge on SR 1211)

Franks Creek

Cheoah Reservoir

Fontana Reservoir (not trout water)

Stecoah Creek

Sawyer Creek

Panther Creek

(J) Haywood County:

All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.

Pigeon River (not trout water)

Hurricane Creek

Cold Springs Creek

Jonathans Creek - lower (concrete bridge in Dellwood to Pigeon River)

Jonathans Creek - upper [SR 1307 bridge (west) to SR 1302 bridge]

Hemphill Creek

West Fork Pigeon River (headwaters to Champion International property line)

(K) Henderson County:

All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.

Broad River (not trout water)

Rocky Broad River (one-half mile north of Bat Cave to Rutherford County line)

Green River - upper (mouth of Bob Creek to mouth of Rock Creek)

Green River - lower (Lake Summit Dam to Polk County line)

Camp Creek (~~Polk County line to SR 1919~~) (SR 1919 to Polk County line)

Big Hungry River

Little Hungry River

North Fork Mills River

(L) Jackson County:

All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.

Tuckasegee River (confluence with West Fork Tuckasegee River to bridge at ~~Wilment~~ Wilmot)

Scott Creek (entire stream, except where posted against trespass)

Buff Creek (SR 1457 bridge below Bill Johnson's place to Scott Creek)

North Fork Scott Creek

Savannah Creek (Headwaters to Bradley's Packing House on NC 116)

Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)

Cullowhee Creek (Tilley Creek to Tuckasegee River, except portion posted for Western Carolina University outdoor classroom)

Bear Creek Lake

Wolf Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Wolf Creek Lake

Balsam Lake

Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Tanasee Creek Lake

West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)

Little Glenville Lake

Shoal Creek (Glenville Reservoir pipeline to mouth)

(M) Macon County:

All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.

Little Tennessee River (not trout water)

Nantahala River (Nantahala Dam to Swain County line) Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal. See Subparagraph (5) of Paragraph (a) of this Rule.

Queens Creek Lake

Roaring Fork Creek (~~US Forest Service property line~~ game land boundary to mouth)

Burntontown Creek

Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672)

Ellijay Creek (except where posted against trespass)

Skitty Creek (not trout water)

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- Cliffside Lake  
Cartoogechaye Creek (US 64 bridge to Little Tennessee River)  
Tessentee Creek (Nichols Branch to Little Tennessee River, except where posted against trespassing)  
Savannah River (not trout water)  
Big Creek (base of falls to Georgia State line)
- (N) Madison County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~  
French Broad River (not trout water)  
Shut-In Creek  
Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line)  
Meadow Fork Creek  
Roaring Fork  
Little Creek  
Max Patch Pond  
Mill Ridge Pond  
Big Laurel Creek (Mars Hill Watershed boundary to Rice's Mill Dam)  
Shelton Laurel Creek (headwaters to NC 208 bridge)  
Big Creek (headwaters to lower game land boundary)  
Mill Creek  
Spillcorn Creek  
Puncheon Fork (Hampton Creek to Big Laurel Creek)
- (O) McDowell County:  
Catawba River (not trout water)  
Buck Creek (not trout water)  
Little Buck Creek (game land portion)  
Curtis Creek (fish barrier to US 70 bridge)  
Newberry Creek (game land portion)  
North Fork Catawba River (headwaters to North Cove School, SR 1569)  
Armstrong Creek (Cato Holler line downstream to upper Greenlee line)  
Mill Creek (upper railroad bridge to Old Fort Dam, except where posted against trespass)
- (P) Mitchell County:  
Nolichucky River (not trout water)  
Big Rock Creek (headwaters to fishing club property above A.D. Harrel farm)  
Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)  
Cane Creek (SR 1219 to Nolichucky River)  
Grassy Creek (East Fork Grassy Creek to mouth)  
East Fork Grassy Creek
- North Toe River (Avery County line to SR 1121, Altapass Road)  
(Q) Polk County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~  
Broad River (not trout water)  
North Pacolet River (Pacolet Falls to NC 108 bridge)  
Fork Creek (Fork Creek Church on SR 1128 to North Pacolet River)  
Big Fall Creek (portion above and below water supply reservoir)  
Green River (Henderson County line to mouth of Brights Creek)  
~~Ostin Creek (Grease Creek) (Upper Halbert Cove Road bridge on SR 1142 to existing Lake Adger water level, except where posted against trespass)~~  
~~Laurel Branch~~  
Little Cove Creek  
~~Big Cove Creek~~  
~~Rishaven Creek~~  
Camp Creek [Henderson County line (top of falls) to Green River]  
Fulloms Creek (SR 1154 to Green River)
- (R) Rutherford County:  
Broad River (not trout water)  
Rocky Broad River (Henderson County line to head of rapids at Goose Pond Hole, except where posted against trespass)
- (S) Stokes County:  
Dan River (lower Flippin property line below SR 1416 to 200 yards downstream from end of SR 1421)
- (T) Surry County:  
Yadkin River (not trout water)  
Ararat River (SR 1727 downstream to SR 1759) Delayed Harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.  
Stewart's Creek (not trout water)  
Pauls Creek (Virginia State line to SR 1625)  
Fisher River (Cooper Creek) (Virginia State line to NC 89 bridge)  
Little Fisher River (Virginia State line to NC 89 bridge)  
Merritt Creek
- (U) Swain County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~  
Little Tennessee River (not trout water)

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- Calderwood Reservoir (Cheoah Dam to Tennessee State line)
- Cheoah Reservoir
- Tuckasegee River (not trout water)  
Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)
- Oconaluftee River (not trout water)  
Connelly Creek  
Alarka Creek
- Nantahala River (Macon County line to existing Fontana Lake water level)
- (V) Transylvania County:  
~~All streams located on game lands, except those listed in Subparagraph (2) of Paragraph (a) of this Rule.~~
- French Broad River (junction of west and north forks to US 276 bridge)
- ~~Little River (not trout water)~~  
~~Laurel Creek (headwaters to existing Cascade Lake water level)~~
- Davidson River (~~game land boundary~~  
~~Avery Creek to Ecusta intake~~)
- East Fork French Broad River (Gladys Branch to French Broad River)
- Middle Fork French Broad River
- West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks)
- Savannah River (not trout water)
- Horsepasture River (Jackson County line to existing Lake Jocassee water level)
- Thompson River (SR 1152 to South Carolina state line, except where posted against trespass)  
~~Gumbottom Creek (SR 1152 to Thompson River)~~
- (W) Watauga County:  
New River (not trout waters)
- North Fork New River (headwaters to Ashe County line)
- South Fork New River (not trout water)  
Meat Camp Creek  
Norris Fork Creek  
Howards Creek (downstream from lower falls)
- Middle Fork New River (Lake Chetola Dam to ~~South Fork~~ New River)
- Yadkin River (not trout water)  
Stony Fork (headwaters to Wilkes County line)
- Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)
- Watauga River (SR 1559 to SR 1114 bridge)  
Beech Creek  
Buckeye Creek Reservoir
- Coffee Lake
- Laurel Creek
- Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)
- Dutch Creek (second bridge on SR 1134 to mouth)
- Crab Orchard Creek
- Boone Fork (headwaters to SR 1562)
- (X) Wilkes County:  
Yadkin River (not trout water)  
Roaring River (not trout water)  
East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943)  
(Delayed harvest regulations apply to portion on Stone Mountain State Park)  
See Subparagraph (5) of Paragraph (a) of this Rule.
- Stone Mountain Creek (Alleghany County line to Bullhead Creek)
- Middle Prong Roaring River (headwaters to second bridge on SR 1736)  
Harris Creek (end of SR 1736 to mouth)
- Pell Branch Pond  
Boundary Line Pond
- West Prong Roaring River (not trout waters)
- Pike Creek  
Pike Creek Pond
- Reddies River (not trout water)  
Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)
- South Fork Reddies River (headwaters to NC 16 bridge)
- North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)
- North Prong Reddies River (Darnell Creek) (downstream ford on SR 1569 to confluence with North Fork)
- Lewis Fork Creek (not trout water)  
South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)
- Fall Creek (except portions posted against trespass)
- Stony Fork Creek (headwaters to Mt. Zion bridge near intersection of SR 1155 and SR 1167)
- (Y) Yancey County:  
Nolichucky River (not trout water)  
Cane River (Cattail Creek to Bowlens Creek)
- Bald Mountain Creek (except portions posted against trespass)
- ~~Bald Creek (not trout water)~~  
~~Lickskillet Creek~~

- Elk Wallow (Schronce Creek)  
Indian Creek (not trout water)  
Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)  
South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)
- (2) Wild Trout Waters. All designated public mountain trout waters located on game lands ~~in and east of Yancey, McDowell and Rutherford Counties~~ are classified as wild trout waters unless classified otherwise. The trout waters listed in this Subparagraph are also classified as wild trout waters. On game lands all tributaries to wild trout waters are also classified as wild trout waters.
- (A) Alleghany County:  
Ramey Creek (entire stream)
- (B) Ashe County:  
Big Horse Creek (Virginia State Line to SR 1361 bridge) Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (3) of Paragraph (a) of this Rule.
- (C) Avery County:  
Birchfield Creek (entire stream)  
~~Buck Timber Creek (game land boundary downstream to its mouth at Wilson Creek, excluding Flat Land Branch)~~  
~~Cary Flat Branch (headwaters to upper game land boundary, excluding Archie Coffey and Boyde Coffey Lakes, and from lower game land boundary to mouth at Buck Timber Creek)~~  
Cow Camp Creek (entire stream)  
~~Cranberry Creek (entire stream)~~  
~~Horse Creek (entire stream)~~  
Jones Creek (entire stream)  
Kentucky Creek (entire stream)  
North Harper Creek (entire stream)  
~~(non game land portions)~~  
~~Rockhouse Creek (entire stream)~~  
~~South Harper Creek (entire stream)~~  
Wilson Creek (~~upper Bill Crump property line downstream to the upper game land boundary~~) [Catch and Release/Artificial Lures Only regulations apply. See Subparagraph (3) of Paragraph (a) of this Rule.]
- (D) Buncombe County:  
Carter Creek (game land portion) (Catch and Release/Artificial Lures only regulations apply. See Subparagraph (3) of Paragraph (a) of this Rule.)
- (E) Burke County:

All waters located on South Mountain State Park, except the main stream of Jacob Fork between the mouth of Shinn Creek and the lower park boundary where delayed harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.

- (F) Caldwell County:  
Buffalo Creek (headwaters to lower Dahl property line)  
Joe Fork (Watauga County line to falls)  
Rockhouse Creek (entire stream)
- (G) Clay County:  
~~Buck Creek (game land portion)~~  
~~Fires Creek (game land portion)~~
- (H) Graham County:  
Big Snow Bird Creek (upstream from old railroad junction)  
Slick Rock Creek (entire stream)
- (I) Haywood County:  
Big Creek (game land portion)  
Big East Fork Pigeon River (game land portion)  
Cataloochee Creek (game land portion)  
Little East Fork Pigeon River (game land portion)  
Middle Prong West Fork Pigeon River
- (J) Henderson County:  
Big Creek (entire stream)  
Bradley Creek (entire stream)  
Fletcher Creek (entire stream)  
South Mills River (game land portion)
- (K) Jackson County:  
Caney Fork Creek (game land portion)  
Gage Creek (entire stream)  
Tanasee Creek (entire stream)  
Whitewater River (downstream from Silver Run Creek to South Carolina State line)  
Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (L) Macon County:  
~~Nantahala River (upstream from bear sanctuary line at Rainbow Springs)~~
- (M) Mitchell County:  
Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)  
Little Rock Creek (headwaters to Green Creek Bridge, except where posted against trespass)  
Wiles Creek (game land boundary to mouth)
- (N) Transylvania County:  
~~Avery Creek (entire stream)~~  
~~Bradley Creek (entire stream)~~  
~~Davidson River (upstream of Avery Creek, excluding Grogan Creek) [Catch~~

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and Release Fly Fishing Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]

Looking Glass Creek (entire stream)

North Fork Broad River [game land portion upstream from Long Branch (Courthouse Creek)]

South Fork Mills River (entire stream)

Whitewater River (downstream from Silver Run Creek to South Carolina State line)

(J) (Q) Watauga County:

Watauga River (Avery County line to SR 1559)

Boone Fork (Blue Ridge Parkway boundary line to Watauga River) [Catch and Release Fly Fishing Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]

Howards Creek (headwaters to lower falls)

(K) (P) Wilkes County:

Big Sandy Creek (portion on Stone Mountain State Park)

Garden Creek (portion on Stone Mountain State Park)

Harris Creek and tributaries [portions on Stone Mountain State Park] [Catch and Release Artificial Lures Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]

Widow Creek (portion on Stone Mountain State Park)

(L) (Q) Yancey County:

Lickskillet Creek (entire stream)

Middle Creek (game land boundary to mouth)

Rock Creek (game land boundary to mouth)

South Toe River (game land boundary downstream to Clear Creek)

(3) Catch and Release/Artificial Lures Only. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:

Harris Creek and tributaries (portions on Stone Mountain State Park, Wilkes County)

Big Horse Creek, excluding tributaries (Virginia state line to SR 1361 bridge, Ashe County)

Three Top Creek (portion located on Bluff Mountain Game Lands, Ashe County)

Wilson Creek (headwaters to game lands boundary above Edgemont, excluding tributaries, Avery County) (game lands portion including tributaries, Avery County)

Upper Creek, Yancey County

Lower Creek, Yancey County

Tuckasegee River including all tributaries above the Clarke property, Jackson County

Flat Creek, Jackson County

Carter Creek (game lands portion), Buncombe County

(4) Catch and Release/Artificial Flies Only. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:

Boone Fork (portion between Blue Ridge Parkway boundary and the Watauga River, Watauga County)

South Toe River (portion from the concrete bridge above Black Mountain Campground downstream to the game land boundary, excluding Camp Creek and Neals Creek, Yancey County)

Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek, Avery County)

Davidson River (headwaters to Avery Creek excluding Avery Creek, Looking Glass Creek, and Grogan Creek, Transylvania County)

(5) Delayed Harvest. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 March and the Friday before the first Saturday in June, inclusive, only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. On the first Saturday in June these streams revert to Hatchery Supported Waters regulations:

Ararat River (SR 1727 downstream to SR 1759, Surry County)

East Prong Roaring River (portion on Stone Mountain State Park, Wilkes County) (from Bullhead Creek downstream to the

- lower Stone Mountain State Park bound-  
ary, Wilkes County)  
Jacobs Jacob Fork (Shinny Creek to lower  
South Mountain State Park boundary,  
Burke County)  
Nantahala River (portion from Whiteoak  
Creek to the powerhouse, Nantahala  
Power and Light power house discharge  
canal, Swain County)
- (b) Fishing in Trout Waters
- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0004(b)(1)].
- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (3) and (4) of Paragraph (a) of this Rule, the following rules apply to fishing in wild trout waters.
- (A) Open Season. There is a year round open season for the licensed taking of trout.
- (B) Creel Limit. The daily creel limit is four trout.
- (C) Size Limit. The minimum size limit is seven inches.
- (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess live or preserved bait while fishing wild trout waters.
- (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

*Statutory Authority G.S. 113-134; 113-272; 113-292.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that DEHNR-GWMB intends to amend rule(s) cited as 15A NCAC 14A .0502. .0512.*

*T*he proposed effective date of this action is September 1, 1992.

*I*nstructions on how to demand a public hearing (must be requested in writing within 15 days of notice): Any person(s) requesting that the Board hold a public hearing on the proposed rules must submit such a request in writing within 15 days after publication of the notice. The request must be submitted to: Dr. Linda W. Little, GWMB, P.O. Box 27687, Raleigh, NC 27611-7687. Mailed written requests must be received no later than 5:00 p.m. June 30, 1992.

*R*eason for Proposed Actions: To make minor technical corrections to the Governor's Waste Management Board's existing rules of procedure for implementing the limited preemption process.

*C*omment Procedures: Interested persons may contact Dr. Linda W. Little at (919) 733-9020 for more information regarding these Rules. Written comments will be received for 30 days after publication of the notice. The request must be submitted to: Dr. Linda W. Little, GWMB, P.O. Box 27687, Raleigh, NC 27611-7687. Mailed written comments must be received no later than 5:00 p.m. July 15, 1992.

## **CHAPTER 14 - GOVERNOR'S WASTE MANAGEMENT BOARD**

### **SUBCHAPTER 14A - RULES OF PROCEDURE FOR IMPLEMENTING THE LIMITED PREEMPTION PROCESS**

#### **SECTION .0500 - PREEMPTION PROCESS: HAZARDOUS WASTE FACILITY**

##### **.0502 DEFINITIONS**

As used in these Rules:

- (1) "Board" means the Governor's Waste Management Board established pursuant to Part 27 of Article 3 of Chapter 143B of the General Statutes.
- (2) "Chairman" means the Chairman of the Board.
- (3) "City" means a municipal corporation defined by G.S. 160A-1.
- (4) "Commission" means the North Carolina Hazardous Waste Management Commission established pursuant to Chapter 130B of the General Statutes.
- (5) "County" means any one of the counties listed in G.S. 153A-10.
- (6) "Days" means calendar days.
- (7) "Facility" means a hazardous waste facility authorized by the Governor as provided in

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- G.S. 130B-5(a) and G.S. 130B-5(b)(1), either proposed, under construction, or operational, defined by G.S. 130A-290(9).
- (8) "File" or "Filing" means to place the paper or item to be filed into the care and custody of the Executive Director of the Board and acceptance thereof by him. All documents filed with the Board, except exhibits, shall be in letter size 8½" by 11".
- (9) "Non-party" means any person who is not a party.
- (10) "Operator" means a private operator or the Hazardous Waste Management Commission or a person employed by the Hazardous Waste Management Commission pursuant to G.S. 130B-7.
- (11) "Ordinance" means a local ordinance, resolution or other action by a county, city, town or other unit or agency of local government including health, environmental or land use regulations, taxes, fees or charges.
- (12) "Party" means the person who submits a petition, or the city or county that adopted the ordinance that is the subject of the petition.
- (13) "Person" means an individual; corporation; company; association; partnership; unit of government, agency, authority or commission at the local, state or federal level; or other legal entity.
- (14) "Service" or "Serve" means personal delivery or, unless otherwise provided by law or rule, delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the party at his or her last known address. Service on the Board means personal delivery by first class United States Postage Service mail or a licensed overnight express mail service, postage prepaid and addressed to the Executive Director, Governor's Waste Management Board, P.O. Box 27687, Raleigh, N.C. 27611-7687. A Certificate of Service by the person making the service shall be appended to every document requiring service under these rules. Service by mail or with licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, with sufficient postage affixed, in an official depository of the United States Postal Service or upon delivery, postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.

*Statutory Authority*      G.S.      130A-293;  
143B-216.13(14).

### **.0512 APPEAL OF BOARD'S DECISION**

The decision of the Board may be appealed in accordance with G.S. 130A-293(e). G.S. 130A-293(e).

*Statutory Authority*      G.S.      130A-293;  
143B-216.13(14).

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that DEHNR - Division of Epidemiology/Vital Records Section intends to amend rule(s) cited as 15A NCAC 19H .0402.*

*The proposed effective date of this action is September 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on July 14, 1992 at the Norton Board Room, 6th Floor, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, NC.*

*Reasons for Proposed Actions: The Administrative Code modifications are required to increase the requirements for filing delayed birth certificates in order to reduce fraud.*

*Comment Procedures: Any person requiring additional information concerning the proposed rules should contact Helen A. Simmons, Vital Records Section, PO Box 29537, Raleigh, NC 27626-0537, (919) 733-3000. Written comments on these rules may be sent to Ms. Simmons at the above address, or submitted at the public hearing. If you desire to speak at the public hearing, notify Ms. Simmons at least 3 days prior to the public hearing.*

## **CHAPTER 19 - HEALTH: EPIDEMIOLOGY**

### **SUBCHAPTER 19H - VITAL RECORDS**

#### **SECTION .0400 - DELAYED REGISTRATION OF BIRTHS**

##### **.0402 DOCUMENTARY EVIDENCE: FACTS TO BE ESTABLISHED**

- (a) The minimum facts which must be established by documentary evidence shall be:
- (1) the full name of the person at the time of birth;
  - (2) the date and place of birth;
  - (3) the full maiden name of the mother; and

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- (4) the full name of the father, except for births out of wedlock.

Documents presented, other than personal affidavits, to establish these facts must be from independent sources and shall be in the form of the an original official record or a duly certified copy thereof or a signed statement from the custodian. These documents must have been established at least five years prior to the date of application. However, documents established less than five years prior to date of application shall be accepted if created prior to the applicant's fifth birthday.

(b) An affidavit of personal knowledge, to be acceptable, must be signed by one of the parents, or a person older than the registrant having knowledge of the facts of birth before an official authorized to administer oaths.

(c) ~~For applicants 4 to 11 years old, two pieces of documentary evidence are required, only one of which may be an affidavit. Both records must prove name, and, date of birth. At least one must prove parentage, and one must prove place of birth.~~

(d) ~~For applicants, 12 and over, three pieces of evidence are required, only one of which may be an affidavit. All three must prove name and date of birth, two must prove place of birth, and one must prove parentage.~~

(e) All evidence shall be abstracted or included with the application and must be signed by the appropriate official. The application and affidavits of personal knowledge shall be retained by the register of deeds for one year. Other supporting documents may be returned to the applicant upon completion of the certificate.

(f) Any exceptions to these requirements of evidence must be personally approved by the State Registrar.

*Statutory Authority G.S. 130A-92(7).*

### **TITLE 21 - OCCUPATIONAL LICENSING BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Registration for Professional Engineers and Land Surveyors intends to amend rule(s) cited as 21 NCAC 56 .0501 - .0503, .0601, .0603, .0701, .1603 - .1604; and adopt rule(s) cited as 21 NCAC 56 .1605 - .1607.*

*The proposed effective date of this action is September 1, 1992.*

*The public hearing will be conducted at 9:00 a.m. on July 10, 1992 at 3620 Six Forks Road, Suite 300, Raleigh, NC 27609.*

**Reasons for Proposed Actions:** To revise existing rules in order to maintain consistency with recent revisions to G.S. 89C and G.S. 47-30, and to adopt new rules to better define the requirements of responsible charge and to establish standards for Topographic and Global Positioning System surveys.

**Comment Procedures:** Any interested person may request information, permission to be heard, or copies of the proposed regulations by contacting Mr. Jerry T. Carter, Executive Secretary, 3620 Six Forks Road, Suite 300, Raleigh, NC 27609, Telephone: (919) 781-9499. Comment will be open for 30 days from the date of publication.

### **CHAPTER 56 - BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

#### **SECTION .0500 - PROFESSIONAL ENGINEER**

##### **.0501 REQUIREMENT FOR LICENSING**

(a) Education. The education of an applicant shall be considered in determining eligibility for licensing as a Professional Engineer. The following terms used by the Board for the specific educational requirements to be eligible to be licensed as a Professional Engineer are defined by the Board as follows:

(1) Engineering Curriculum of Four or more Years Approved by the Board: A curriculum that has been accredited by the Accreditation Board for Engineering and Technology (ABET).

(2) Engineering or Related Science Curriculum of Four or more Years Other than Ones Approved by the Board: A curriculum not accredited by ABET but which has course work which contains engineering or scientific principles such as physics, math, chemistry and engineering technology. The Board will determine the acceptability of such curriculum on a case-by-case basis.

(3) Equivalent Education Satisfactory to the Board:

(A) A bachelors degree in Engineering Technology shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.

(B) An associate degree in an engineering related curriculum with an additional two

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- years of progressive engineering experience shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
- (C) A diploma from an accredited high school with an additional four years of progressive engineering experience shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
- (D) Foreign degrees may be considered as recommended by the National Council of Engineering Examiners (NCEE) National Council of Examiners for Engineering and Surveying (NCEES) in its publications; provided however, maximum equivalency granted shall be that of an engineering or related science curriculum of four or more years other than one approved by the Board.
- (b) Experience:
- (1) General. The experience of an applicant shall be considered in determining whether an applicant is eligible to be licensed as a Professional Engineer.
- (2) Required Experience. In evaluating the work experience required the Board will consider the total experience record, and the progressive nature of the record. (Not less than half of required engineering experience shall be of a professional grade and character, and should be performed under the responsible charge of a registered Professional Engineer.)
- (3) Definition. The terms "progressive engineering experience" or "progressive experience on engineering projects" mean that during the period of time in which an applicant has made a practical utilization of his knowledge he has shown continuous improvement, growth and development in his utilization of that knowledge as revealed in the complexity and technical detail of his work product or work record. The applicant must show that he has continuously assumed greater individual responsibility for his work product over that period of time.
- (4) Specific Credit for Experience. In evaluating progressive engineering experience the Board may give credit for experience in the following areas of work:
- (A) Graduate schooling or research in an approved engineering curriculum - maximum two years;
- (B) Progressive land surveying - maximum two years;
- (C) Teaching of science or engineering subjects at the graduate level in an approved engineering curriculum - maximum two years.
- (5) Experience Not Considered:
- (A) Experience obtained prior to graduation while receiving education for which credit is given toward registration, unless such experience is obtained in a co-op program in an engineering curriculum approved by the Board.
- (B) Experience obtained in a foreign country unless performed under direct supervision of a registered Professional Engineer registered with a member board of the National Council of Engineering Examiners (NCEE), National Council of Examiners for Engineering and Surveying (NCEES).

*Statutory Authority G.S. 89C-10; 89C-13.*

### **.0502 APPLICATION PROCEDURE: INDIVIDUAL**

- (a) General. A person desiring to become licensed as a Professional Engineer must make application to the Board on a form prescribed and furnished by the Board.
- (b) Request. A request for an appropriate application form may be made at the Board address.
- (c) Applicable Forms:
- (1) Student Form. This form requires the applicant to set forth his personal history, his educational background, provide character references, and furnish a photograph for identification purposes. The form is for use by those graduating, or those having graduated, from an engineering curriculum approved by the Board as follows:
- (A) Students graduating in the same semester or quarter in which the fundamentals of engineering examination is administered.
- (B) Graduates with less than two years since graduation.
- (2) Professional Engineer Form:
- (A) All persons, including comity applicants and graduates of an engineering curriculum approved by the Board with more than two years progressive engineering experience, shall apply for registration by using the Professional Engineer form. The submission of this form will signify that the applicant seeks regis-

- tion, and will result in seating for each examination required, when the applicant is so qualified. This form requires the applicant to set forth his personal and educational background, his engineering experience and his character references. A passport-type photograph for identification purposes is required.
- (B) Persons who have previously completed the fundamentals examination by use of the Student Form will submit the Professional Engineer Form to request registration when qualified to take the final eight-hour examination.
- (3) Supplemental Form. Persons who initially applied for the fundamentals of engineering exam using the Professional Engineer form must supplement their initial application upon applying for the principles and practice examination. The supplemental form requires that engineering experience from the date of the initial application until the date of the supplemental application be listed. Five references shall be submitted which are current to within one year of the examination date.
- (4) Reference Forms:
- (A) Persons applying to take the examination for fundamentals of engineering must submit to the Board names of three individuals who are familiar with the applicant's work, character and reputation. One of these individuals must be registered as a Professional Engineer. Persons applying to take the examination for principles and practices of engineering must submit to the Board names of five individuals who are familiar with the applicant's work, character and reputation. Two of these individuals must be registered Professional Engineers.
- (B) In addition to the applicant submitting names to the Board of individuals familiar with the applicant's work, character and reputation, those individuals listed are required to submit to the Board their evaluation of the applicant on forms supplied them by the applicant. Such information is considered confidential and will not be released by the Board.
- (C) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, his knowledge of the applicant and to state other information concerning the applicant's engineering experience, character and reputation.
- (D) The reference forms will be received by the applicant when he receives his application. The reference forms are then to be distributed by the applicant to the persons listed by him on his application as references. It is the applicant's responsibility to see that the individuals listed as references return the reference forms to the Board prior to the filing deadline for the examination.
- (d) Fees:
- (1) Student Form. The registration fee for applicants applying for examination on the fundamentals of engineering using the student form is payable with the filing of the application. Once the applicant passes the examination on the fundamentals of engineering, the fee is applied toward the applicant's subsequent application for registration as a Professional Engineer using the Professional Engineer form.
- (2) Professional Engineer Form. The registration fee for applicants applying for the examination on the fundamentals of engineering or the principles and practice of engineering using the Professional Engineer form is payable with the filing of the application.
- (3) Comity. The registration fee for applicants for comity registration is payable with the filing of the application.
- (4) Re-Examination. The registration fee for any applicant who is re-examined is payable with the filing of the application for re-examination.
- (e) The Board will accept the records maintained by the National Council of Engineering Examiners (NCEE) National Council of Examiners for Engineering and Surveying (NCEES) as evidence of registration in another state.

*Statutory Authority G.S. 89C-10; 89C-13; 89C-14.*

#### **.0503 EXAMINATIONS**

(a) Fundamentals of Engineering. This eight-hour written examination is designed primarily to test the applicant's proficiency and knowledge of the fundamentals of engineering.

(b) Principles and Practice of Engineering. This eight-hour written examination is designed to test the applicant's proficiency and knowledge of engineering principles and practices.

(c) Examination Aids. Examinees may utilize examination aids as specified in published Board material furnished to applicants.

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(d) Preparation of Examination. The examinations in the fundamentals of engineering and in the principles and practice of engineering are national examinations promulgated by the ~~National Council of Engineering Examiners (NCEE)~~ National Council of Examiners for Engineering and Surveying (NCEES) of which the Board is a member.

(e) Examination Sequence. Before the applicant is permitted to be examined on the principles and practice of engineering, the applicant must successfully pass the examination on the fundamentals of engineering. In no event is an applicant allowed to take both examinations at the same time or at the same scheduled examination date.

(f) Examination Filing Deadline. The applicant who wishes to take an examination must have his completed application (which includes all necessary references, transcripts, and verifications) in the Board office prior to the Board-established deadline dates.

(g) Seating Notice. After approval of an application to take either the examination on the fundamentals of engineering or principles and practice, the applicant will be sent a seating notice. This notice will inform the applicant of the exact date, time and location of the examination and the seat to which he is assigned.

(h) Unexcused Absences. After a seating notice has been issued for a scheduled examination by the Board, and the applicant fails to appear, that applicant's record will reflect "unexcused absence" unless the absence was for official jury duty or the applicant was not physically able to be present, as indicated by a doctor's certificate.

(i) Oral Interview. During the examination on the principles and practice of engineering, the applicant may be interviewed by Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to education or experience.

(j) Re-Examination. A person who has failed an examination is allowed to apply to take the examination again at the next regularly scheduled examination period. A person having a combined record of three failures or unexcused absences will not be allowed to take that examination again until a written appeal is made to the Board and qualifications for examination are reviewed and reaffirmed by the Board. The applicant must demonstrate to the Board that actions have been taken to improve the applicant's chances for passing the exam.

Statutory Authority G.S. 89C-10; 89C-13 to 89C-15.

## **SECTION .0600 - LAND SURVEYOR**

### **.0601 REQUIREMENT FOR LICENSING**

(a) Education. The following terms used by the Board for the specific education requirements to be eligible to be licensed as a Registered Land Surveyor are defined by the Board as follows:

(1) B.S. in Surveying or Other Equivalent Curricula. These degrees must contain a minimum of 45 semester hours, or their quarter-hour equivalents, of subjects directly related to the practice of surveying. Of the 45 semester hours, a minimum of 12 semester hours of surveying fundamentals, 12 semester hours of applied surveying practice and 12 semester hours of advanced or theoretical surveying courses is required. The remainder of the required surveying courses may be elective-type courses directly related to surveying.

(2) Associate Degree in Surveying Technology, ~~or Civil Engineering Technology With Surveying Option. These degrees~~ ~~This degree~~ must contain a minimum of 30 quarter hours, or their semester-hour equivalents, of subjects directly related to the practice of surveying. Appropriate courses in surveying practices, subdivision design and planning, surface drainage and photogrammetry must be successfully completed.

(3) ~~Education Equivalents Satisfactory to the Board:~~

(A) ~~B.S. Degree in Civil Engineering or Forestry. These degrees must contain a minimum of three semester hours or quarter hour equivalent of basic surveying. In addition, they must contain complete sequences of courses in mathematics and the physical sciences as are usually expected in the B.S. degrees. Credit may be given for surveying courses taken in addition to those required for the degree. Credit may be allowed at the rate of one month reduction in the total experience requirement as determined in G.S. 89C-13 for each semester hour of approved credit. The maximum credit allowed is 12 months' reduction of the required experience. To convert quarter hours to semester hours, multiply the quarter hours by two thirds.~~

(B) ~~Associate Degree in Civil Engineering Technology; General Curriculum. This degree must contain a minimum of 42 quarter hours or semester hour equivalents of surveying courses. Credit may~~

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be given for surveying courses taken in addition to those required for the degree. Credit may be allowed at the rate of one month reduction in the total experience requirement as determined in G.S. 89C-13 for each semester hour of approved credit. The maximum credit allowed is 42 months' reduction of the required experience. To convert quarter hours to semester hours, multiply the quarter hours by two thirds.

(C) Other Technical or Engineering Degrees, Correspondence Courses and Post Secondary Credits Not Resulting in a Degree. These will be evaluated by the Board on a case-by-case basis and based on the evaluation, experience requirements may be reduced by a maximum amount of 30 months.

(b) Experience:

(1) Definition. As used in the North Carolina Engineering and Land Surveying Act the term "progressive practical surveying experience" means that during the period of time in which an applicant has made a practical utilization of his knowledge of the principles of geometry and trigonometry in determining the form, boundaries, position and extent of the earth's surface, he has shown continuous improvement, growth and development in his utilization of that knowledge. In addition, the applicant must show that he has continuously assumed greater individual responsibility for his work product over that period of time.

(2) Experience Accepted. In order to have experience adequate to comply with the requirements of the law, the applicant's work experience must be concerned with land surveying and is normally gained while working under the responsible charge of a Registered Land Surveyor.

(3) Other Experience. Work done in the following areas require evidence to the Board of its equivalency to land surveying:

- (A) construction layout,
- (B) engineering surveying,
- (C) part-time surveying work.

(c) Exhibits, Drawings, Plats:

(1) Required Exhibit Before Fundamentals of Land Surveying Examination. The applicant must submit, along with his application, an actual plat or an example plat which discloses that the applicant is knowledgeable in the elements of good mapping practices.

- (2) Required Exhibit Before Principles and Practices of Land Surveying Examination:
  - (A) General. The applicant must submit, along with his application, an actual plat of a boundary survey of an actual project which discloses that the applicant is knowledgeable of the contents of the Standards of Practice for Land Surveying in North Carolina (Section .1600) and also is able to apply this knowledge by preparing a plat in accordance with the various legal and professional requirements of land surveying.
  - (B) Physical Requirement. The map submitted must be a clean, clear legible print of an original map in the file of a Registered Land Surveyor.
- (3) Specific Requirements. The specific details that will be evaluated are those applicable to the particular project as described in the Standards of Practice for Land Surveying in North Carolina (Section .1600) and as described in G.S. 47-30. In addition, the exhibit shall contain a statement that the field work, calculation and mapping was performed by the applicant under the supervision of a Registered Land Surveyor, attested to by the Registered Land Surveyor.
- (4) Requirements for Comity Applicant. The map submitted by an applicant under comity may be a sample plat of a project or work performed in his state of registration which will be evaluated in accordance with legal requirements of North Carolina.

*Statutory Authority G.S. 89C-10; 89C-13; 47-30.*

### .0603 EXAMINATIONS

(a) Fundamentals of Land Surveying. This eight-hour written examination is designed primarily to test the applicant's proficiency and knowledge of the fundamentals of land surveying.

(b) Principles and Practice of Land Surveying. This eight-hour written examination is designed to test the applicant's proficiency and knowledge of land surveying practices and procedures generally and specifically within North Carolina.

(c) Examination Aids. Examinees may utilize examination aids as specified in published Board material furnished to applicants.

(d) Preparation of Examination. The examination in the fundamentals of land surveying and seven six hours of the examination in the principles and practice of land surveying are national examinations promulgated by the National Council of Engineering Examiners (NCEES) Na-

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tional Council of Examiners for Engineering and Surveying (NCEES) of which the Board is a member. The ~~one hour~~ two-hour North Carolina portion of the principles and practice of land surveying examination is prepared and graded by the Board.

(e) Examination Filing Deadline. The applicant who wishes to take an examination must have his completed application (which includes all necessary references, transcripts, and verifications) in the Board office prior to the Board-established deadline dates.

(f) Seating Notice. After approval of an application the applicant will receive a seating notice. This notice will inform the applicant of the exact date, time and location of the examination and the seat to which he is assigned.

(g) Unexcused Absences. After a seating notice for a scheduled examination has been issued by the Board, and the applicant fails to appear, the applicant's record will reflect "unexcused absence" unless the absence was for official jury duty or the applicant was not physically able to be present, as indicated by a doctor's certificate.

(h) Oral Interview. During the examination on the principles and practice of land surveying, the applicant may be interviewed by Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to education or experience.

(i) Re-Examination. A person who has failed an examination is allowed to apply to take the examination again at the next regularly scheduled examination period. A person having a combined record of three failures or unexcused absences will not be allowed to take that examination again until a written appeal is made to the Board and the qualifications for examination are reviewed and reaffirmed by the Board. The applicant must demonstrate to the Board that actions have been taken to improve the applicant's chances for passing the exam.

*Statutory Authority G.S. 89C-10; 89C-15.*

### **SECTION .0700 - STANDARDS OF PROFESSIONAL CONDUCT**

#### **.0701 RULES OF PROFESSIONAL CONDUCT**

(a) In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the profession of engineering and land surveying, the following rules of professional conduct are promulgated in accordance with G.S. 89C-20 and shall be binding upon every person holding a certificate of registration as a Professional Engineer or Registered Land Surveyor,

and on all partnerships or corporations or other legal entities authorized to offer or perform engineering or land surveying services in this state.

All persons registered under the provisions of Chapter 89C of the General Statutes are charged with having knowledge of the existence of the rules of professional conduct, and shall be deemed to be familiar with their several provisions and to understand them.

(b) The Professional Engineer and Registered Land Surveyor shall conduct his practice in order to protect the public health, safety and welfare.

He shall at all times recognize his primary obligation to protect the public in the performance of his professional duties. If his engineering or land surveying judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, he shall inform his employer of the possible consequences and notify other proper authorities of the situation, as may be appropriate.

(c) The Professional Engineer and Registered Land Surveyor shall perform his services only in areas of his competence and:

- (1) Shall undertake to perform engineering and land surveying assignments only when qualified by education or experience in the specific technical field of professional engineering or land surveying involved.
- (2) May accept an assignment requiring education or experience outside of his own field of competence, but only to the extent that his services are restricted to those phases of the project in which he is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.
- (3) Shall not affix his signature or seal to any engineering or land surveying plan or document dealing with subject matter for which he lacks competence by virtue of education or experience, nor to any such plan or document not prepared under his direct supervisory control. Provided, he Direct supervisory control (responsible charge) requires a registrant or a full-time employee to carry out all client contacts, provide internal and external financial control, oversee employee training, and exercise control and supervision over all job requirements to include research, planning, design, field supervision and work product review. These services may not be fulfilled by a non-registered, contract employee. The Professional Engineer and Registered Land Surveyor may affix his seal and signature to drawings and documents depicting the work of two

- or more professionals provided he designates by a note under his seal the specific subject matter for which he is responsible.
- (4) In the event a question arises as to his competence to perform an engineering or land surveying assignment in a specific technical field of engineering or land surveying which cannot be otherwise resolved to the Board's satisfaction, the Board may require him to submit to an appropriate examination as determined by the Board.
- (d) The Professional Engineer and Registered Land Surveyor shall issue public statements only in an objective and truthful manner and:
- (1) Shall be completely objective and truthful in all professional reports, statements or testimony. He shall include all relevant and pertinent information in such reports, statements or testimony.
  - (2) When serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his testimony.
  - (3) Will issue no statements, criticisms, or arguments on engineering or land surveying matters connected with public policy which are inspired or paid for by an interested party, or parties, unless he has prefaced his comment by explicitly identifying himself, by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest he may have in the instant matters.
  - (4) Shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another engineer or land surveyor, nor shall he indiscriminately criticize another engineer or land surveyor's work in public. If he believes that another engineer or land surveyor is guilty of misconduct or illegal practice, he shall present such information to the proper authority for action.
- (e) The Professional Engineer and Registered Land Surveyor shall avoid conflicts of interest and:
- (1) Shall promptly inform his employer or client of any business association, interests, or circumstances which could influ-

- ence his judgment or the quality of his services.
- (2) Shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.
  - (3) Shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.
  - (4) Shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his client or employer in connection with work for which he is responsible.
  - (5) When in public service as a member, advisor, or employee of a governmental body or department, shall not participate in considerations or actions with respect to services provided by him or his organization in private engineering and land surveying practices.
  - (6) Shall not solicit or accept an engineering or land surveying contract from a governmental body on which a principal or officer of his organization serves as a member.
  - (7) Shall not attempt to supplant another engineer or land surveyor in a particular employment after becoming aware that the other has been selected for the employment.
- (f) The Professional Engineer and Registered Land Surveyor shall solicit or accept work only on the basis of his qualifications and:
- (1) Shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.
  - (2) Shall compete for employment on the basis of professional qualification and competence to perform the work. He shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive or unfair statement or claim regarding the cost, quality or extent of services to be rendered.
  - (3) Shall not falsify or permit misrepresentation of his, or his associates', academic or professional qualifications. He shall not misrepresent or exaggerate his degree of responsibility in or for the subject

matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work.

(g) The Professional Engineer and Registered Land Surveyor shall associate only with reputable persons or organizations and:

- (1) Shall not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature.
- (2) If he has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or of the North Carolina Engineering and Land Surveying Act, shall present such information to the Board in writing and shall cooperate with the Board in furnishing such further information or assistance as may be required by the Board.

(h) A Professional Engineer or Registered Land Surveyor whose professional registration is revoked or suspended by another jurisdiction, shall be subject to discipline by the Board if the registrant's action violates Chapter 89C of the North Carolina General Statutes or these rules.

*Statutory Authority G.S. 89C-17; 89C-20.*

**SECTION .1600 - STANDARDS OF PRACTICE  
FOR LAND SURVEYING IN NORTH  
CAROLINA**

**.1603 CLASSIFICATION OF BOUNDARY  
SURVEYS**

(a) General. Boundary surveys are defined as surveys made to establish or to reestablish a boundary line on the ground, or to obtain data for constructing a map or plat showing a boundary line. For the purpose of this Rule the term refers to all surveys, including "loan" or "physical" surveys, which involves the determination or depiction of property lines. For the purpose of specifying minimum allowable surveying standards for boundary surveys, four general classifications of lands in North Carolina are established from the standpoint of their real value, tax value, or location. Each map shall contain a statement of the calculated ratio of precision before adjustments.

(b) Local Control Network Surveys (Class AA). Local control network surveys are traverse

networks utilizing permanent points for the purpose of establishing local horizontal control networks for future use of local surveyors. For Class AA boundary surveys in North Carolina, the angular error of closure shall not exceed ten seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 20,000 feet of perimeter of the parcel of land (1:20,000).

(c) Urban Land Surveys (Class A). Urban surveys include lands which normally lie within a town or city. These lands are usually commercial property and justify maximum surveying accuracy. For Class A boundary surveys in North Carolina, the angular error of closure shall not exceed 20 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 10,000 feet of perimeter of the parcel of land (1:10,000).

(d) Suburban Land Surveys (Class B). Suburban surveys include lands in or surrounding the urban properties of a town or city. The land represented by these surveys is often valuable; but more important, it is land whose value is by definition rapidly increasing. For Class B boundary surveys in North Carolina, the angular error of closure shall not exceed 25 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 7,500 feet of perimeter of the parcel of land (1:7,500).

(e) Rural and Farmland Surveys (Class C). Rural and farmland surveys include lands located in rural areas of North Carolina and generally outside the suburban properties. For Class C boundary surveys in North Carolina, the angular error of closure shall not exceed 30 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 5,000 feet of perimeter of the parcel of land (1:5,000).

*Statutory Authority G.S. 89C-10; 89C-21.*

**.1604 MAPPING REQUIREMENTS FOR  
BOUNDARY SURVEYS**

(a) The size of a map shall be such that all details can be shown clearly.

(b) Any lines which are not actually surveyed must be clearly indicated on the map by a broken line and a statement included revealing the source of information from which the line is derived.

(c) Any revision on a map after a surveyor's seal is affixed shall be noted and dated.

(d) All surveys based on the North Carolina grid system will contain a statement identifying the coordinate system used as the North Ameri-

can Datum of 1983 ("NAD 83") or the North American Datum of 1927 ("NAD 27").

(e) All plats (maps), unless clearly marked as "Preliminary Plat - Not for recordation, conveyances, or sales" will be sealed, signed and dated by the Registered Land Surveyor and shall contain the following:

- (1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina grid ('NAD 83' or 'NAD27'), or is referenced to old deed or plat bearings. If the north index is magnetic or referenced to old deed or plat bearings, the date and the source (if known) such index was originally determined shall be clearly indicated.
- (2) The azimuth or courses and distances as surveyed of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required.
- (3) All plat lines shall be horizontal (level) or North Carolina Grid grid measurements. All information lines shown on the plat shall be correctly plotted to the scale shown. Enlargement of portions of a plat are acceptable in the interest of clarity, where shown as inserts. on the same sheet. Where the North Carolina grid system is used the grid factor shall be shown on the face of the plat. and a designation as to whether horizontal ground distances or grid distances were used. If grid distances are used, it must be shown on the plat.
- (4) Where a boundary is formed by a curved line, the following data must be given: actual curve survey data, or as a traverse of bearings and distances around the curve. If standard curve data is used the bearing and distance of the long chord (from point of curvature to point of tangency) must be shown on the face of the plat.
- (5) Where a subdivision of land is set out on the plat, all streets and lots shall be carefully accurately plotted with dimension lines indicating widths and all other information pertinent to reestablishing all lines in the field. This shall include bearings and distances sufficient to form a continuous closure of the entire perimeter.
- (6) Where control corners have been established in compliance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended,

the location and pertinent information as required in the reference statute shall be plotted on the plat. All other corners which are marked by monument or natural object shall be so identified on all plats, and where practical all corners of adjacent owners in along the boundary lines of the subject tract which are marked by monument or natural object must shall be shown. with a distance from one or more of the subject tract's corners.

- (7) The names of adjacent land owners, along with or lot, block, or parcel, identifier and subdivision designations or other legal reference where applicable, shall be shown where they could be determined by the surveyor.
- (8) All visible and apparent rights-of-way, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.
- (9) Where the plat is the result of a survey, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the National Geodetic Survey (formerly U.S. Coast and Geodetic Survey) system, North Carolina Geodetic Survey, where such monument is within 2,000 feet of said corner, the subject property. Where the North Carolina grid system coordinates of said monument are on file in the North Carolina Department of Natural Resources and Community Development, Environment, Health, and Natural Resources, the coordinates of both the referenced corner and the monuments used shall be computed and shown in X (easting) and Y (northing) coordinates on the map, plat. The coordinates shall be identified as based on 'NAD 83', indicating North American Datum of 1983, or as 'NAD 27', indicating North American Datum of 1927. The ties lines to the monuments shall also be sufficient to establish true north or grid north bearings for the plat if the monuments exist in pairs. Within a previously recorded subdivision that has been tied to grid control, control monuments within the subdivision may be used in lieu of additional ties to grid control. Within a previously recorded subdivision that has not been tied to grid control, if horizontal control monuments are available within

- 2,000 feet, the above requirements shall be met; but in the interest of bearing consistency with previously recorded plats, existing bearing control should be used where practical. In the absence of Grid Control, or within a previously recorded subdivision, other appropriate natural monuments or land marks shall be used. In all cases, the tie lines shall be sufficient to accurately reproduce the subject lands from the control or reference points used.
- (10) A vicinity map (location map) shall appear on the face of the plat.
- (11) Each map shall contain the property designation, name of owner or prospective owner, location (including township, county, and state), and the date or dates the survey was conducted. ~~in the title space or Title Block.~~ In addition each map will contain a scale of the drawing listed in words or figures, a bar-graph when required or necessary, the name, address, registration number, and seal of the surveyor, the title source, and a legend depicting nomenclature.
- (12) Area on all closed surveys is to be computed by double meridian distance or equally accurate method. Area computations by estimation, by planimeter, by scale, or by copying from another source are not acceptable methods, except in the case of tracts containing inaccessible areas and in these areas the method of computation will be clearly stated.

*Statutory Authority G.S. 89C-10; 89C-21.*

**.1605 CLASSIFICATION OF TOPOGRAPHIC SURVEYS**

- (a) General. Topographic surveys are defined as the measurement of lands for the purpose of plotting the accurate location of existing surface and subsurface objects, elevations, and contour lines. For the purpose of specifying minimum allowable surveying standards, four general classifications of topographic surveys are established.
- (b) Urban and suburban topographic surveys. (Class A). Urban and suburban topographic surveys include lands which normally lie within or adjoining a town or city. These lands are usually commercial properties, subdivisions, condominium and townhouse developments, etc. For Class A topographic surveys in North Carolina, the vertical error in feet shall not exceed 0.04 times the square root of the number of miles run from the reference datum.

- (c) Other topographic surveys (Class B). Other topographic surveys include all lands which are not covered by Class A as described in this Rule. For Class B topographic surveys in North Carolina, the vertical error in feet shall not exceed 0.10 times the square root of the number of miles run from the reference datum.
- (d) Trigonometric topographic surveys (Class C). Trigonometric topographic surveys can be used for vertical control for aerial and topographic mapping. The vertical error in feet shall not exceed 0.3 times the square root of the number of miles run from the reference datum.

*Statutory Authority G.S. 89C-10; 89C-21.*

**.1606 SPECIFICATIONS FOR TOPOGRAPHIC SURVEYS**

- (a) The accuracy for all topographic surveys shall be determined by the following method: The elevation represented by any contour line as plotted on the final plat shall not have a vertical error greater than one-half of the interval of the platted contours. (i.e. 5-foot contour interval = 2.5 feet maximum vertical error.)
- (b) Locations of definite objects such as horizontal control lines or control points, buildings, utilities, roads, walks, trees, boundary, easements and setbacks, etc., shall be shown within scaling accuracy of and in relationship to the horizontal control line, or control points and each other.

*Statutory Authority G.S. 89C-10; 89C-21.*

**.1607 GLOBAL POSITIONING SYSTEM SURVEYS**

- (a) General. Global Positioning System (GPS) surveys are defined as any survey performed by using the GPS 3-dimensional measurement system based on observations of the radio signals of the Department of Defense's NAVSTAR (Navigation Satellite Timing and Ranging) GPS System. All GPS surveys performed in North Carolina shall be performed by a Registered Land Surveyor licensed in North Carolina in accordance with specifications established by the Federal Geodetic Control Committee.

- (b) The Registered Land Surveyor in responsible charge of the GPS survey shall certify, sign and seal all prepared documents. When a map or document consists of more than one sheet, only one sheet must contain the certificate and all others must be signed and sealed. The certificate shall contain the following information:

- (1) Class of GPS survey.  
(2) Type of GPS field procedure (Static, Kinematic, Pseudo-Kinematic).

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- (3) Type of adjustment used.
- (4) Dates of survey.
- (5) Type and model of GPS receivers used.
- (6) What datum coordinates or geographic positions are based on.

The certificate shall be substantially in the following form:

"I, \_\_\_\_\_, certify that this map was drawn under my supervision from an actual GPS survey made under my supervision; that this GPS survey was performed to FGCC specifications and that I used GPS field procedures and coordinates were obtained by adjustment. That this survey was performed on \_\_\_\_\_ using (type) (number) of receivers and all coordinates are based on \_\_\_\_\_."

(c) Prepared documents shall include coordinates of all monuments and a map showing all non-trivial vectors measured. The map shall also contain the following information:

- (1) Scale (bar or numerical).
- (2) Legend.
- (3) Loop closures before any adjustment.
- (4) Certification.
- (5) Company name, address and phone number.

*Statutory Authority G.S. 89C-10; 89C-21.*

### TITLE 24 - INDEPENDENT AGENCIES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Housing Finance Agency intends to amend rules cited as 24 NCAC 1M .0101, .0201 - .0205 and adopt rules cited as 24 NCAC 1M .0206, .0301 - .0306, .0401 - .0406.*

*The proposed effective date of this action is September 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on June 30, 1992 at the North Carolina Housing Finance Agency, 3300 Drake Circle, Suite 200, Raleigh, NC 27611-3300.*

*Reason for Proposed Action: To update rules and provide additional information on Housing Trust Fund program requirements.*

*Comment Procedures: Written comments must be submitted to the APA Coordinator by July 15,*

*1992. Oral comments may be presented at the hearing.*

### CHAPTER I - N.C. HOUSING FINANCE AGENCY

#### SUBCHAPTER IM - NORTH CAROLINA HOUSING TRUST FUND

##### SECTION .0100 - GENERAL POLICY GUIDELINES

###### .0101 ADOPTION OF CHAPTER 122E BY REFERENCE

(a) The North Carolina Housing Trust and Oil Overcharge Act Chapter 122E of the General Statutes, and future amendments to the Act are adopted by reference under G.S. 150B-14(c). The Act creates the North Carolina Housing Partnership (the 'partnership') and establishes overall policy guidelines for the administration of the Housing Trust Fund (the 'Trust Fund').

(b) Copies of Chapter 122E may be obtained at the North Carolina Housing Finance Agency Agency's office, 3300 Drake Circle, Suite 200, Raleigh, North Carolina 27607.

*Statutory Authority G.S. 122E-4; 122E-5; 122E-8; 150B-14(c).*

##### SECTION .0200 - GENERAL HOUSING TRUST FUND PROGRAM REQUIREMENTS

###### .0201 PURPOSE

The purpose of the ~~Housing and Energy Conservation Incentive Program~~ (the 'Program') Trust Fund is to provide funding to encourage the production and rehabilitation of energy efficient housing for very low-, low- and moderate-income households. ~~Program funds~~ The Trust Fund will be used both to leverage other funds investments for new housing production or comprehensive housing rehabilitation projects and independently for ~~weatherization~~ energy conservation improvements.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

###### .0202 ELIGIBILITY

(a) Eligible projects under the ~~program~~ Trust Fund programs will include:

- (1) Comprehensive housing rehabilitation projects; that utilize ~~program~~ funds for energy conservation improvements and other funding sources for the other rehabilitation improvements;
- (2) Projects that exclusively involve energy conservation improvements to existing residential structures;

(3) New construction projects; ~~that utilize program funds for the energy conservation related elements of the projects and other funding sources for the remainder of the construction; and~~

(4) Demonstration. ~~Other~~ projects involving one or more of the approaches identified in Subparagraphs (a) (1), (2) or (3) of this Rule.

(b) Specific activities eligible for financing through Trust Fund programs ~~program funds~~ will be identified in the program application material and funding documents. A portion of the ~~program funds~~ Trust Fund may be made available for predevelopment costs, program support and program administration, as determined by the partnership and consistent with the requirements of the Act.

(c) Eligible applicants for Trust Fund programs ~~generally program funds~~ include units of state and local government, public agencies, lead regional organizations, nonprofit organizations, and for-profit developers. Eligible applicants for each specific program funding cycle will be identified in program application documents. Eligible recipients of ~~program funds~~ Trust Fund funding must directly operate the program funded.

(d) Housing units assisted under ~~the program~~ Trust Fund programs must be occupied by very low-, low- or moderate-income households, as defined in the act. Specific targeting of funds required under ~~the~~ each program will be identified in the program application materials and funding documents.

(e) All rental housing units assisted under the ~~program~~ Trust Fund must remain affordable to the ~~occupant, target population,~~ as required by the Act. Applicants for ~~program~~ funding will be required to demonstrate how affordability will be maintained. The agency, through its funding ~~agreement, documents~~ will include measures to help ensure that affordability is maintained.

(f) Eligible forms of assistance under ~~the pro-~~ gram Trust Fund programs will include loans, grants, combination ~~grant, loans~~ grants and loans and other comparable forms of assistance which are consistent with the purposes of the Act. Loans will be repaid to the ~~Housing~~ Trust Fund. The agency ~~may~~ will establish standards for grants and loans in program documents.

(g) Eligible loan types under Trust Fund programs will include predevelopment loans, construction financing, permanent financing and bridge loans. Specific loans available under each program will be identified in the program application documents.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0203 APPLICATION PROCEDURES**

(a) Funding cycles for Trust Fund programs ~~program funds~~ will be established on an annual basis, or more frequently, depending on the need for and the availability of funds. Separate funding cycles may be utilized for new ~~rehabilitation/weatherization~~ rehabilitation, energy conservation and demonstration other projects.

(b) The agency will solicit applications for Trust Fund programs ~~program funds~~ by advertising in ~~newspapers and other media~~, mailing information to eligible applicants [as defined in Rule .0202(c) of this Section] and by other methods of public announcement.

(c) Eligible applicants may apply for funding under ~~the program~~ Trust Fund programs by submitting an application to the agency in a manner described in the program application material documents available from the agency. The agency will develop the application material documents which will include, but not be limited to, a program description, application instructions Request for Proposals and the application form(s). ~~and supporting documents.~~ The agency ~~may~~ will from time to time amend the contents of the application material documents.

(d) The agency will ~~provide~~ offer technical assistance to prospective applicants to assist them in preparing applications for program funds Trust Fund programs.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0204 SELECTION PROCEDURES**

(a) In distributing program funds, the partnership will develop an allocation formula that will promote the distribution of funds across the state based on the following allocation factors: lower-income housing need; an equitable distribution of funds among the state's geographic regions; and a balance ~~between~~ in the availability of funds ~~in between~~ urban and rural areas.

(b) The agency's evaluation of applications for funding will be based on criteria established for each Trust Fund program. All criteria used to evaluate applications will be described in the application documents. take into consideration the following criteria:

- (1) Consistency of the application with the purposes and requirements of the Act;
- (2) Consistency of the application with the purposes and requirements of the Stripper Well Litigation Settlement Agreement;

- (3) Benefit to very low and low income households;
- (4) Extent to which program funds are recycled;
- (5) Experience of the applicant and its administrative plan; and
- (6) Community support for the project.
- (7) In addition, priority will be given to projects that:
  - (1) Address special housing needs;
  - (2) Expand opportunities in areas where there is a shortage of standard and affordable housing; and
  - (3) Upgrade housing currently failing to meet minimum standards of health and safety.

The partnership may establish additional evaluation criteria. All criteria utilized for evaluating applications will be described in the application materials.

(d) All application information must be submitted before the applicable deadline. The agency will evaluate applications based on the allocation categories and the evaluation criteria described in Rule .0204(a), (b) and (c). Additional information on the review process may be provided in the program application material.

(b) (e) If applications received by the applicable deadline are insufficient to utilize all of the funds allocated to a funding cycle, geographic region and urban or rural area, or other funding category, the partnership, at its discretion, may extend the application deadline. Funds allocated to a funding category may also be reallocated by the partnership, in a manner defined by the partnership, if the available funds are underutilized within the category.

(f) Upon completion of its review, the agency will determine whether funding approval will be granted or denied. The agency will notify applicants selected for funding in writing of the amount of funding awarded and the timeframe for the funding awarded and will provide additional information about the funding awarded. When the agency is unable to approve an application for funding, it will notify the applicant in writing and specify the reason for the denial of funding.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

#### **.0205 ADMINISTRATION**

(a) The agency will enter into a execute funding agreement documents with each applicant selected as a Trust Fund program recipient. Information in the agreement documents will include, but not be limited to:

- (1) The amount of funding;

- (2) The obligations of the recipient;
- (3) The terms of the disbursement of funds from the Housing Trust Fund;
- (4) The maximum loan or grant amount per housing unit assisted with program funds; and
- (5) Provisions for the repayment of grants and loans to the Housing Trust Fund by recipients, subrecipients and their successors and assigns.

(b) The agency will periodically review the performance of project program recipients according to the funding agreement documents. This will be done at least annually and may be done on a more frequent basis.

(c) Recipients will submit such periodic reports as required by the agency to facilitate the monitoring process. The reports will be described in greater detail in the program funding documents. The reports will include, but not be limited to, progress on the accomplishment of program objectives, including information on program beneficiaries, and data on housing units constructed or improved and annual audited financial statements.

(d) If the agency finds there has been substantial nonperformance under the funding agreement documents and the situation is not corrected within a period of time, as established in the funding documents, agreement and after notice to the recipient of such finding, the agency may terminate or modify the agreement after written notice is provided. Trust Fund funding or declare a loan default after following the notification procedures provided for in the funding documents.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

#### **.0206 PROGRAM FEES**

(a) The agency may charge reasonable fees to administer Trust Fund programs. The fees may include but are not limited to application fees, funding commitment fees, fees to extend funding commitments and program monitoring fees. Interest may also be charged on loans made with program funds.

(b) The agency may establish one fee structure for public and nonprofit organizations and a different fee structure for private for-profit individuals and organizations.

(c) The specific fees applicable to each program will be described in program application and funding documents.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**SECTION .0300 - HOUSING PRODUCTION PROGRAM**

**.0301 GOAL AND OBJECTIVES**

(a) The goal of the Housing Production Program (the 'program') is to increase the supply of housing that is affordable to very low, low- and moderate-income households.

(b) The objectives of the program are:

- (1) To primarily serve low-income households;
- (2) To add units to the housing stock that will be affordable on a long-term basis;
- (3) To encourage energy-efficient housing design and construction that will lower operating costs for both homeowners and tenants;
- (4) To assist projects that would otherwise not be financially feasible as lower-income housing;
- (5) To assist communities that have not participated in previous Program funding cycles;
- (6) To achieve an equitable geographic distribution of Program funds; and
- (7) To assist projects serving populations with special housing needs.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0302 ELIGIBILITY REQUIREMENTS**

(a) Both rental and home ownership projects are eligible under the program. In addition, eligible projects are those including:

- (1) New construction;
- (2) Acquisition and rehabilitation; or
- (3) Substantial rehabilitation.

(b) Program funds may be used for the following costs:

- (1) Construction costs;
- (2) Preconstruction costs; and
- (3) Other development costs.

(c) Program financing may include both amortizing and deferred payment loans. Loans may range from 0 percent interest to the prevailing market interest rate. Some loans may be forgiven.

(d) Program funds may be provided as:

- (1) Permanent mortgage financing;
- (2) Construction loans;
- (3) Predevelopment loans; and
- (4) Bridge loans.

(e) Specific eligibility requirements for each program funding cycle may vary, depending on the priorities established for that cycle. All program eligibility requirements will be identified in

the application documents for each program funding cycle.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0303 THRESHOLD REVIEW CRITERIA**

The agency's evaluation of applications for funding will consider the following threshold criteria:

- (1) The application must be complete and submitted on the proper form by the application deadline;
- (2) The application must demonstrate acceptable cash flow projections sufficient to pay debt service, including the program loan, and operating expenses for the project;
- (3) The application must meet the program eligibility requirements addressing eligible applicants, eligible projects, eligible households, eligible uses of funds and eligible forms of assistance;
- (4) The applicant must control the site by ownership, contract to purchase, long term lease, or other means acceptable to the agency;
- (5) The application must identify the sources of both construction and permanent financing;
- (6) The application must provide pro forma information, in the format required by the agency, demonstrating both the affordability of the project to eligible households and the need for program funds;
- (7) The application must provide evidence that the project is consistent with local land use plans and development regulations and that public and/or private infrastructure will be available to serve the project;
- (8) The application must provide site and market information that indicates there will be sufficient demand for the project; and
- (9) The applicant must not be under administrative restrictions from federal, state or local sources.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0304 RANKING CRITERIA**

(a) Applications meeting the threshold requirements will be ranked within their respective areas using a competitive point ranking system. No more than 25 percent of the total points available will be awarded under any single criterion. For rental projects the agency will consider the following ranking criteria:

- (1) Project Location. Points will be awarded if previous program rental projects have not been sited in the county or city.
- (2) Sponsor Experience. Points will be awarded based on successful development experience for similar types of projects including, but not limited to, the number of units developed and the avoidance of mortgage defaults or adverse management agent proceedings.
- (3) Affordability. Points will be awarded based on the affordability of the project to eligible households and length of time the development will remain affordable to low-income households.
- (4) Feasibility. Points will be awarded based on the agency's analysis of the economic feasibility of the project using factors including, but not limited to, the debt service coverage ratio, the anticipated occupancy rate, the projected per unit operating costs, the proposed per unit construction cost, the status of zoning and other development permits and the status of construction and permanent financing.
- (5) Other Contributions. Points will be awarded based on the percentage of the project replacement cost that is derived from other below-market-rate sources of debt financing and from equity financing.
- (6) Project Impacts. Points will be awarded based on the relative extent of housing needs in the county of the proposed project.
- (7) Special Needs. Points will be awarded for projects that will serve populations with special housing needs including the homeless, the elderly, persons with disabilities and large families, based on the percentage of units reserved for those households and the types of services to be provided to the households.
- (8) Market, Site and Building Characteristics. Points will be awarded based on: the extent of demand documented by the project's market study; if the project helps distribute low-income housing units in the community or is part of a neighborhood revitalization strategy; if the site provides good access to employment, shopping, services and transportation; if there are no incompatible land uses impacting the site; and based on the quality of the site plan and building design.
- (b) Applications for home ownership projects meeting the threshold requirements will be ranked within their respective areas using a competitive point ranking system. No more than 25

percent of the total points available will be awarded under any single criterion. For home ownership projects the competitive ranking criteria will include:

- (1) Project Location. Points will be awarded if previous program home ownership projects have not been sited in the county or city.
- (2) Sponsor Experience. Points will be awarded if the principal has successful development experience for similar types of projects including, but not limited to, the number of units developed, and the avoidance by the principal or marketing/sales agent of mortgage defaults, bankruptcy, adverse fair housing disputes, adverse civil rights disputes and adverse proceedings and settlements involving the Department of Housing and Urban Development (HUD) or the Farmers Home Administration (FmHA).
- (3) Affordability. Points will be awarded based on the affordability of the units to eligible households, the replacement cost of the homes and the monthly cost including principal, interest, taxes and insurance (PITI) of the homes.
- (4) Feasibility. Points will be awarded based on the agency's analysis of the economic feasibility of the project using criteria including, but not limited to, the energy efficiency of the homes, the amount of the downpayment and closing costs to be paid by the homebuyers, the projected length of time to complete the project, the status of zoning and subdivision approval, and the status of construction and permanent financing.
- (5) Other Contributions. Points will be awarded based on the percentage of the project replacement cost that is derived from other below-market-rate sources of debt financing and from equity.
- (6) Impacts. Points will be awarded based on the relative housing needs in the county of the proposed project.
- (7) Special Needs. Points will be awarded for projects that will serve populations with special housing needs including families in assisted rental housing, the elderly, persons with disabilities and large families, based on the percentage of units reserved for households with special needs and the types of services and the extent of services to be provided for the households.
- (8) Market, Site and Building Characteristics. Points will be awarded if the project helps distribute low- and moderate-income

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housing units in the community or is an integral element of a neighborhood revitalization strategy; if the site provides good access to employment, shopping, services and transportation, if there are no incompatible land uses impacting the site; and based on the quality of the site plan and building design.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

### .0305 AGENCY BOARD APPROVAL

(a) In its evaluation of applications the agency will also analyze the capacity of project owners using the following criteria:

- (1) Project owners (organizations and individuals) must provide evidence of sufficient financial capacity to successfully complete and operate the proposed project.
- (2) Project owners, who have defaulted on a Federal Housing Administration (FHA) insured, Farmers Home Administration (FmHA) funded, tax-exempt bond funded or federally subsidized project mortgage in the past five years, will be specifically identified in any presentation to the agency board.
- (3) Project proposals will be reviewed by staff under alternative operating conditions including, but not limited to, extended lease-up of up to three years, rent concessions of up to 20 percent and higher operating costs per unit based on averages for other projects in service.
- (4) Project owners may be requested to provide financial assurances including letters of credit or cash escrows that offset any operating losses that will be sustained by the project owner under alternative operating conditions. Financial assurances will be required of project owners who have defaulted on projects identified in Subparagraph (a)(2) of this Rule.  
(b) The Agency will use the criteria established in Rules .0303, .0304 of this Section and Paragraph (a) of this Rule to identify those applications to be further analyzed before the final financing decision is made by the agency's board of directors. Selection for financing will be based on the agency's underwriting of each remaining project. The underwriting will include an analysis of:
  - (1) The need and market demand for the project;
  - (2) The financial feasibility of the project;
  - (3) The reasonableness of project costs;

- (4) The project's site plan and building design; and
- (5) The need of each project for program funds.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

### .0306 FUNDING COMMITMENT

(a) Projects selected for financing will receive a written conditional commitment of program funds. The commitment will identify all conditions related to the funding award. The agency will charge a commitment fee which will be identified in the program application documents.

(b) After written commitments for all other project financing have been obtained, the applicant will receive a firm commitment of program funds. The firm commitment will identify the timeframe for starting and completing the project.

(c) When the agency is unable to approve an application for financing, it will notify the applicant in writing and specify the reason for the denial of funding.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

## SECTION .0400 - REHABILITATION INCENTIVE PROGRAM

### .0401 GOALS AND OBJECTIVES

(a) The goal of the Rehabilitation Incentive Program (the 'program') is to encourage the rehabilitation of housing occupied by very low-, low- and moderate-income households by providing funding for the energy-related costs associated with comprehensive housing rehabilitation projects.

(b) The objectives of the program are:

- (1) To primarily serve very low- and low-income households;
- (2) To involve communities that are underserved by current programs;
- (3) To achieve an equitable geographic distribution of funds in nonmetropolitan areas based on the housing needs of lower-income households;
- (4) To encourage comprehensive rehabilitation of housing currently failing to meet minimum health and safety standards; and
- (5) To provide assistance to both renters and homeowners.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

### .0402 ELIGIBILITY REQUIREMENTS

(a) The rehabilitation of both owner-occupied and rental housing is eligible under the program. Rehabilitated units must meet or exceed local housing code standards or, if there is no local code, the Housing Quality Standards of the U.S. Department of Housing and Urban Development (HUD). Rehabilitation work must also meet the program's energy efficiency standards.

(b) Program funds can be used for the following costs:

- (1) Energy conservation-related rehabilitation, identified in program application documents; and
- (2) Program support costs, including staff or consultant costs for writing construction specifications, supervising rehabilitation work and related support costs.
- (c) Program financing will include both grants and deferred payment loans. Home owners may receive either grants or deferred payment loans. Investor owners may receive only deferred payment loans. Some loans may be forgiven.
- (d) Specific eligibility requirements for each program funding cycle may vary, depending on the priorities establishing for that cycle. All program eligibility requirements will be identified in the application documents for each program funding cycle.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0403 THRESHOLD REVIEW CRITERIA**

The agency's evaluation of applications for funding will consider the following threshold criteria:

- (1) The application must be complete and submitted on the proper form by the application deadline;
- (2) The project must meet the program eligibility requirements addressing eligible applicants, eligible projects, eligible households, eligible uses of funds and eligible forms of assistance;
- (3) The applicant must identify proposed sources and amounts of matching funds, although those funds do not have to be committed at the time of application;
- (4) The application must provide evidence of local government support for the project; and
- (5) The applicant must not be under administrative restrictions from federal, state or local sources.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0404 RANKING CRITERIA**

Applications meeting the threshold requirements will be ranked within their respective areas using a competitive point ranking system. No more than 25 percent of the total points available will be awarded under any single criterion. The ranking criteria will include:

- (1) Very Low- and Low-Income Benefit. Points will be awarded based on the percentage of program funds to be used to benefit very low- and low-income households;
- (2) Special Needs Targeting. Points will be awarded based on the percentage of program funds used to serve households with special housing needs, such as the homeless, the elderly, persons with disabilities, and large families;
- (3) Rental Housing Targeting. Points will be awarded based on the percentage of program funds to be used to benefit low-income renters;
- (4) Other Contributions. Points will be awarded based on the extent to which other public and private funds are used to match program funds;
- (5) Needs. Points will be awarded based on the relative housing needs in the county(ies) to be served with program funds; and
- (6) Project Location. Points will be awarded based on the extent to which the city or county has been underserved in previous Trust Fund program funding cycles.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0405 AGENCY BOARD APPROVAL**

(a) In its evaluation of applications the agency will also analyze the capacity of applicants using the following criteria:

- (1) The experience of the applicant in undertaking similar types of projects;
- (2) The performance of the applicant, if applicable, under previous Trust Fund funding cycles;
- (3) The capacity of the organization, including adequate operating budget and staffing support, to complete the project;
- (4) The commitment of the organization to providing affordable housing using local resources (not federal or state resources); and
- (5) Applicants who have defaulted on a Federal Housing Administration (FHA) insured Farmers Home Administration (FmHA) funded, tax-exempt bond funded or federally subsidized project mortgage in

the past five years, will be specifically identified and may be required to provide additional financial assurances.

(b) The agency will use the criteria established in Rules .0403, .0404 of this Section and Paragraph (a) of this Rule to identify those applications to be further analyzed before the final funding decision is made by the agency's board of directors. Selection for funding will be based on the agency's analysis of each remaining project. In addition to criteria identified in this Rule, the analysis will include the need of each project for program funds, the reasonableness of project costs and the relevance of the project to the housing needs of the area.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0406 FUNDING COMMITMENT**

(a) Applicants selected for funding will be notified and provided with a program Funding Agreement.

(b) Prior to executing the Funding Agreement the recipient may be required to provide the agency with additional information on the proposed project or to modify the proposed project. After the Funding Agreement has been executed the recipient's grant will be disbursed in 25 percent increments.

(c) When the agency is unable to approve an application for funding, it will notify the applicant in writing and specify the reason for the denial of funding.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

## LIST OF RULES CODIFIED

*The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.*

### Key:

<i>Citation</i>	= Title, Chapter, Subchapter and Rule(s)
<i>AD</i>	= Adopt
<i>AM</i>	= Amend
<i>RP</i>	= Repeal
<i>With Chgs</i>	= Final text differs from proposed text
<i>Eff. Date</i>	= Date rule becomes effective
<i>Temp. Expires</i>	= Rule was filed as a temporary rule and expires on this date

### NORTH CAROLINA ADMINISTRATIVE CODE

**MAY 1992**

TITLE	DEPARTMENT	TITLE	DEPARTMENT
2	Agriculture	16	Education
4	Economic and Community Development	17	Revenue
10	Human Resources	21	Occupational Licensing
11	Insurance	12 - Board for Contractors	14 - Board of Cosmetic Art Examiners
12	Justice	17 - Board of Dietetics, Nutrition	36 - Board of Nursing
13	Labor		Personnel
15A	Environment, Health, and Natural Resources	25	

Citation		AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
2	NCAC 9L .0509		•		•	07 01 92	
4	NCAC 2R .0204 - .0205		•			07 01 92	
	.0301 - .0302			•		07 01 92	
	.0303	•			•	07 01 92	
	.0304	•				07 01 92	
	.0404 - .0405		•			07 01 92	
	.0701		•		•	07 01 92	
	.0801			•		07 01 92	
	.0802		•			07 01 92	
	.0805 - .0808			•		07 01 92	
	.0810 - .0812			•		07 01 92	
	.0814 - .0819			•		07 01 92	
	.0820		•			07 01 92	
	.0821 - .0823	•				07 01 92	
	.0901 - .0902		•			07 01 92	

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4 NCAC 2R .0906			•			07 01 92	
.0909		•				07 01 92	
.1008			•		•	07 01 92	
.1009		•				07 01 92	
.1203			•			07 01 92	
.1401 - .1402			•			07 01 92	
.1407			•			07 01 92	
.1503		•				07 01 92	
.1701			•			07 01 92	
.1703			•			07 01 92	
.1704				•		07 01 92	
.1707				•		07 01 92	
.1708			•			07 01 92	
.1710		•				07 01 92	
.1801			•			07 01 92	
.1803 - .1805		•				07 01 92	
.1901			•			07 01 92	
.1903			•			07 01 92	
2S .0101			•			07 01 92	
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.0103			•			07 01 92	
.0105			•			07 01 92	
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.0202			•			07 01 92	
.0205			•			07 01 92	
.0218			•			07 01 92	
.0220			•			07 01 92	
.0221				•		07 01 92	
.0227			•			07 01 92	
.0229			•			07 01 92	
.0232			•		•	07 01 92	
.0233 - .0236		•				07 01 92	
.0402			•			07 01 92	
.0403			•		•	07 01 92	
.0406				•		07 01 92	
.0407			•			07 01 92	
.0502			•			07 01 92	

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4 NCAC 2S .0510			•			07 01 92	
.0512 - .0514			•			07 01 92	
.0515				•		07 01 92	
.0516			•			07 01 92	
.0518 - .0520			•			07 01 92	
.0523		•				07 01 92	
.0524		•			•	07 01 92	
.0525 - .0526		•				07 01 92	
.0527		•			•	07 01 92	
.0528		•				07 01 92	
.0529		•			•	07 01 92	
.0601				•		07 01 92	
.0603				•		07 01 92	
.0605 - .0611				•		07 01 92	
.0612		•				07 01 92	
.0703 - .0704			•			07 01 92	
.0705		•			•	07 01 92	
.0706 - .0707			•			07 01 92	
.0708		•				07 01 92	
.0801			•			07 01 92	
.0802 - .0804				•		07 01 92	
.0902 - .0903			•			07 01 92	
.1001			•			07 01 92	
.1004 - .1007			•			07 01 92	
.1008			•		•	07 01 92	
.1009 - .1012			•			07 01 92	
.1014			•			07 01 92	
.1020			•		•	07 01 92	
.1101			•			07 01 92	
.1103			•			07 01 92	
2T .0101			•			07 01 92	
.0201 - .0203			•			07 01 92	
.0206		•				07 01 92	
.0401			•		•	07 01 92	
.0409			•			07 01 92	
.0501 - .0502			•			07 01 92	
.0602			•			07 01 92	
.0604			•		•	07 01 92	

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4	NCAC	2T .0605			•		07 01 92	
		.0607		•			07 01 92	
		.0608			•		07 01 92	
		.0610	•				07 01 92	
		.0702		•			07 01 92	
		.0704		•			07 01 92	
		.0707 - .0709		•			07 01 92	
		.0710			•		07 01 92	
		.0711 - .0712	•				07 01 92	
		.0713 - .0714	•			•	07 01 92	
		.0715	•				07 01 92	
		.0716	•			•	07 01 92	
		.0717	•				07 01 92	
		.0901		•			07 01 92	
19L		.0403		•		•	06 01 92	
		.0407		•		•	06 01 92	
10	NCAC	3J .2801		•		•	06 01 92	
		3L .0901	•			•	07 01 92	
		.1110	•			•	07 01 92	
		.1202	•			•	07 01 92	
		22O .0101	•				07 01 92	
		.0201	•				07 01 92	
		.0202	•			•	07 01 92	
		.0203 - .0205	•				07 01 92	
		22P .0101	•			•	07 01 92	
		.0201	•			•	07 01 92	
		26H .0204		•			06 01 92	11 30 92
		.0206		•			06 01 92	11 30 92
11	NCAC	6A .0801		•		•	06 01 92	
		.0802 - .0808		•			06 01 92	
		.0809		•		•	06 01 92	
		.0810 - .0811		•			06 01 92	
8		.0801 - .0802		•		•	06 01 92	
		.0805		•			06 01 92	
		.0819 - .0820	•			•	06 01 92	
		.0821 - .0826	•				06 01 92	
		.0827	•			•	06 01 92	
		.0828 - .0836	•				06 01 92	

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11	NCAC 16 .0205	•			•	06 01 92	
	.0206	•				06 01 92	
12	NCAC 10B .0601		•			06 01 92	
	.0901		•			06 01 92	
13	NCAC 13 .0201		•			06 01 92	
	.0404		•			06 01 92	
	15 .0402		•		•	06 01 92	
15A	NCAC 2B .0101		•		•	08 03 92	
	.0104		•		•	08 03 92	
	.0202		•		•	08 03 92	
	.0211		•		•	08 03 92	
	.0301		•		•	08 03 92	
	6E .0006		•			07 01 92	
16	NCAC 6G .0401 - .0404	•			•	06 01 92	
17	NCAC 4C .0101		•			06 01 92	
	.1301	•				06 01 92	
	.1401 - .1403	•				06 01 92	
	.1501	•				06 01 92	
	.1601 - .1603	•				06 01 92	
	.1701 - .1707	•				06 01 92	
	.1801 - .1803	•				06 01 92	
	.1901	•				06 01 92	
	7B .0101		•			06 01 92	
	.0125		•			06 01 92	
	.0201		•			06 01 92	
	.0301		•			06 01 92	
	.0713		•			06 01 92	
	.1101		•			06 01 92	
	.1123		•			06 01 92	
	.1501		•			06 01 92	
	.1602		•			06 01 92	
	.1905 - .1907	•				06 01 92	
	.2402		•			06 01 92	
	.2602		•			06 01 92	
	.2611		•			06 01 92	
	.2702		•			06 01 92	
	.2801		•			06 01 92	
	.2901		•			06 01 92	

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Citation		AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
17	NCAC 7B .3104		•			06 01 92	
	.3107	•				06 01 92	
	.3204	•				06 01 92	
	.3302		•			06 01 92	
	.3401		•			06 01 92	
	.3501		•			06 01 92	
	.3601		•			06 01 92	
	.4403		•			06 01 92	
	.4416		•			06 01 92	
	.4501		•			06 01 92	
	.4603 - .4604		•			06 01 92	
	.4618			•		06 01 92	
	.4619		•			06 01 92	
	.4701		•			06 01 92	
	.5458		•			06 01 92	
	.5460	•				06 01 92	
21	NCAC 12 .0103		•			06 01 92	
	.0202		•			06 01 92	
	.0205		•			06 01 92	
	.0207	•				06 01 92	
	.0302		•			06 01 92	
	.0306		•			06 01 92	
	.0409	•			•	06 01 92	
	.0505 - .0506	•				06 01 92	
14L	.0107			•		06 01 92	
14N	.0101 - .0103	•				06 01 92	
	.0104	•			•	06 01 92	
	.0105 - .0106	•				06 01 92	
	.0107 - .0108	•			•	06 01 92	
	.0109 - .0110	•				06 01 92	
	.0111	•			•	06 01 92	
	.0112 - .0114	•				06 01 92	
	.0201 - .0202	•				06 01 92	
	.0301 - .0302	•				06 01 92	
	.0401 - .0402	•				06 01 92	
	.0501 - .0502	•				06 01 92	
17	.0001	•				06 01 92	
	.0002 - .0005	•			•	06 01 92	

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21	NCAC 17 .0006	•				06 01 92	
	.0007	•			•	06 01 92	
	.0008	•				06 01 92	
	.0009	•			•	06 01 92	
	.0010 - .0011	•				06 01 92	
	.0013	•			•	06 01 92	
	.0015	•			•	06 01 92	
36	.0109		•		•	06 01 92	
	.0301 - .0303		•		•	06 01 92	
	.0304			•		06 01 92	
	.0309	•				06 01 92	
	.0310	•			•	06 01 92	
	.0315	•			•	06 01 92	
	.0317	•				06 01 92	
	.0318 recodified from 21 NCAC 36		•		•	06 01 92	
	.0309					05 27 92	
	.0320 recodified from 21 NCAC 36		•		•	06 01 92	
	.0310					05 27 92	
	.0321 recodified from 21 NCAC 36		•		•	06 01 92	
	.0315					05 27 92	
	.0322 recodified from 21 NCAC 36		•			06 01 92	
	.0317					05 27 92	
	.0323 recodified from 21 NCAC 36		•		•	06 01 92	
	.0318					05 27 92	
	.0324 recodified from 21 NCAC 36		•			06 01 92	
	.0320					05 27 92	
25	NCAC 1D .0510 - .0512		•			06 01 92	
	.0515		•		•	06 01 92	
1H	.0602		•			06 01 92	
	.0604 - .0605		•			06 01 92	
	.0621		•			06 01 92	
	.0626		•			06 01 92	
	.0628		•		•	06 01 92	

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25	NCAC 1J .1001 - .1002	•				06 01 92	
	.1003	•			•	06 01 92	
	.1004	•				06 01 92	
	.1006	•				06 01 92	
	.1007 - .1008	•			•	06 01 92	
	.1009	•				06 01 92	
	.1010	•			•	06 01 92	
	.1011	•				06 01 92	
	1L .0203		•			06 01 92	

## ***RRC OBJECTIONS***

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(e). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).*

### **AGRICULTURE**

#### Food and Drug Protection

2 NCAC 9L .0509 - Consultant's Educational and Experience Reqrnts Agency Revised Rule	<i>RRC Objection</i>	05 21/92
	<i>Obj. Removed</i>	05 21/92

#### Plant Industry

2 NCAC 48A .0239 - Permit to Sell Bees Agency Revised Rule	<i>RRC Objection</i>	04 16/92
	<i>Obj. Removed</i>	04 16/92
2 NCAC 48A .0240 - Form BS-11 Agency Revised Rule	<i>RRC Objection</i>	04 16/92
	<i>Obj. Removed</i>	04 16/92
2 NCAC 48A .0611 - Program Participation and Payment of Fees Agency Revised Rule	<i>RRC Objection</i>	04 16/92
	<i>Obj. Removed</i>	04 16/92

### **ECONOMIC AND COMMUNITY DEVELOPMENT**

#### Banking Commission

4 VCAC 3C .0807 - Subsidiary Investment Approval Agency Revised Rule	<i>RRC Objection</i>	04 16/92
	<i>Obj. Removed</i>	04 16/92
4 NCAC 3C .0901 - Books and Records Agency Revised Rule	<i>RRC Objection</i>	04 16/92
	<i>Obj. Removed</i>	04 16/92
4 NCAC 3C .0903 - Retention: Reproduction/Disposition of Bank Records Agency Revised Rule	<i>RRC Objection</i>	04 16/92
	<i>Obj. Removed</i>	04 16/92
4 NCAC 3D .0302 - Administration of Fiduciary Powers Agency Revised Rule	<i>RRC Objection</i>	04 16/92
	<i>Obj. Removed</i>	04 16/92
4 NCAC 3H .0102 - Regional Bank Holding Company Acquisitions Agency Revised Rule	<i>RRC Objection</i>	04 16/92
	<i>Obj. Removed</i>	04 16/92

#### Board of Alcoholic Control

4 NCAC 2R .0701 - Standards for Commission and Employees Agency Revised Rule	<i>RRC Objection</i>	05 21/92
	<i>Obj. Removed</i>	05 21/92
4 NCAC 2R .0702 - Disciplinary Action of Employee	<i>RRC Objection</i>	05 21/92
4 NCAC 2R .1008 - Conflicts of Interest Agency Revised Rule	<i>RRC Objection</i>	05 21/92
	<i>Obj. Removed</i>	05 21/92
4 NCAC 2R .1205 - Closing of Store	<i>RRC Objection</i>	05 21/92
4 NCAC 2S .0102 - Applications for Permits: General Provisions Agency Revised Rule	<i>RRC Objection</i>	05 21/92
	<i>Obj. Removed</i>	05 21/92
4 NCAC 2S .0106 - Special Requirements for Hotels Agency Revised Rule	<i>RRC Objection</i>	05 21/92
	<i>Obj. Removed</i>	05 21/92
4 NCAC 2S .0503 - Pre-Orders	<i>RRC Objection</i>	05 21/92
4 NCAC 2S .0527 - Guest Rooms Considered Residence Agency Revised Rule	<i>RRC Objection</i>	05 21/92
	<i>Obj. Removed</i>	05 21/92
4 NCAC 2S .0529 - Mixed Beverages Catering Permits in 'Dry Areas' Agency Revised Rule	<i>RRC Objection</i>	05 21/92
	<i>Obj. Removed</i>	05 21/92
4 NCAC 2S .1008 - Advertising of Malt Beverages and Wine by Retailers	<i>RRC Objection</i>	05 21/92

## ***RRC OBJECTIONS***

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<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
community Assistance		
NCAC 19L .0103 - Definitions	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
NCAC 19L .0403 - Size and Use of Grants Made to Recipients	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
NCAC 19L .0407 - General Application Requirements	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
NCAC 19L .1301 - Definition	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92

### **Savings Institutions Division: Savings Institutions Commission**

NCAC 16F .0001 - Permitted Activities	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
NCAC 16F .0008 - Finance Subsidiary Transactions With Parent	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
NCAC 16F .0009 - Issuance of Securities by Finance Subsidiaries	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
NCAC 16F .0011 - Holding Company Subsidiaries/Finance Subsidiaries	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92

## **ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

### **Coastal Management**

5A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	<i>RRC Objection</i>	05/21/92
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### **Environmental Management**

5A NCAC 2B .0101 - General Procedures	<i>RRC Objection</i>	05/21/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
5A NCAC 2B .0104 - Considerations in Assigning Water Supply Class	<i>RRC Objection</i>	05/21/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
5A NCAC 2B .0202 - Definitions	<i>RRC Objection</i>	05/21/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
5A NCAC 2B .0211 - Fresh Surface Water Classifications and Standards	<i>RRC Objection</i>	05/21/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
5A NCAC 2B .0301 - Classifications: General	<i>RRC Objection</i>	05/21/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92

### **Radiation Protection**

5A NCAC 11 .0338 - Specific Terms and Conditions of Licenses	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
5A NCAC 11 .0339 - Expiration of Licenses	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92

## **HUMAN RESOURCES**

### **Facility Services**

10 NCAC 3J .2801 - Supervision	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92

## ***RRC OBJECTIONS***

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<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
<i>10 NCAC 3J .3401 - Applicability - Construction</i>	<i>RRRC Objection</i>	04/16/92
<i>    Agency Revised Rule</i>	<i>RRRC Objection</i>	04/16/92
<i>10 NCAC 3L .0902 - License</i>	<i>RRRC Objection</i>	04/16/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
<i>10 NCAC 3L .0903 - Application for and Issuance of License</i>	<i>RRRC Objection</i>	04/16/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
<i>10 NCAC 3L .0904 - Inspections</i>	<i>RRRC Objection</i>	04/16/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
<i>10 NCAC 3L .0905 - Multiple Premises</i>	<i>RRRC Objection</i>	04/16/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
<i>10 NCAC 3L .1202 - Case Review and Plan of Care</i>	<i>RRRC Objection</i>	04/16/92
	<i>Obj. Removed</i>	05/21/92

### **Mental Health: General**

<i>10 NCAC 14M .0704 - Program Director</i>	<i>RRRC Objection</i>	05/21/92
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### **INSURANCE**

#### **Agent Services Division**

<i>11 NCAC 6A .0802 - Licensee Requirements</i>	<i>RRRC Objection</i>	05/21/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92

### **LABOR**

#### **Elevator and Amusement Device**

<i>13 NCAC 15 .0402 - Responsibility for Compliance</i>	<i>RRRC Objection</i>	04/16/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
<i>13 NCAC 15 .0429 - Go Karts</i>	<i>RRRC Objection</i>	04/16/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92

### **LICENSING BOARDS AND COMMISSIONS**

#### **Cosmetic Art Examiners**

<i>21 NCAC 14N .0107 - Special Arrangements for Disabled</i>	<i>RRRC Objection</i>	05/21/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92

#### **Dietetics/Nutrition**

<i>21 NCAC 17 .0002 - Requirement of License</i>	<i>RRRC Objection</i>	05/21/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
<i>21 NCAC 17 .0003 - Qualifications for Licensure</i>	<i>RRRC Objection</i>	05/21/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
<i>21 NCAC 17 .0004 - Applications</i>	<i>RRRC Objection</i>	05/21/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
<i>21 NCAC 17 .0005 - Examination for Licensure</i>	<i>RRRC Objection</i>	05/21/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
<i>21 NCAC 17 .0007 - Provisional License</i>	<i>RRRC Objection</i>	05/21/92
<i>    Agency Revised Rule</i>	<i>Obj. Removed</i>	05/21/92
<i>21 NCAC 17 .0012 - Suspension, Revocation and Denial of License</i>	<i>RRRC Objection</i>	05/21/92
<i>    Agency Revised Rule</i>	<i>RRRC Objection</i>	05/21/92
<i>21 NCAC 17 .0014 - Code of Ethics for Professional Practice Conduct</i>	<i>RRRC Objection</i>	05/21/92

## ***RRC OBJECTIONS***

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*Agency Revised Rule*

*RRC Objection 05 21/92*

*Nursing*

*1 NCAC 36 .0301 - Approval Body  
Agency Revised Rule*

*RRC Objection 05 21 92  
Obj. Removed 05 21 92*

### **STATE PERSONNEL**

*Office of State Personnel*

*5 NCAC 1H .0603 - Special Recruiting Programs  
5 NCAC 1J .1005 - Eligibility for Services*

*RRC Objection 05 21 92  
RRC Objection 05 21 92*

*This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.*

**25 NCAC 1B .0414 - SITUATIONS IN WHICH ATTORNEYS FEES MAY BE AWARDED**

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 25 NCAC 1B .0414 void as applied in *William Paul Fearington, Petitioner v. University of North Carolina at Chapel Hill, Respondent* (91 OSP 0905).

## CONTESTED CASE DECISIONS

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

### KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission	EDC	Department of Public Instruction
BDA	Board of Dental Examiners	EHR	Department of Environment, Health, and Natural Resources
BME	Board of Medical Examiners	ESC	Employment Security Commission
BMS	Board of Mortuary Science	HAF	Hearing Aid Dealers and Fitters Board
BOG	Board of Geologists	IIRC	Human Relations Commission
BON	Board of Nursing	IND	Independent Agencies
BOO	Board of Opticians	INS	Department of Insurance
CFA	Commission for Auctioneers	LBC	Licensing Board for Contractors
COM	Department of Economic and Community Development	MLK	Milk Commission
CPS	Department of Crime Control and Public Safety	NIA	Board of Nursing Home Administrators
CSE	Child Support Enforcement	OAH	Office of Administrative Hearings
DAG	Department of Agriculture	OSP	Department of State Personnel
DCC	Department of Community Colleges	PIHC	Board of Plumbing and Heating Contractors
DCR	Department of Cultural Resources	POD	Board of Podiatry Examiners
DCS	Distribution Child Support	SOS	Department of Secretary of State
DHR	Department of Human Resources	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOA	Department of Administration		
DOJ	Department of Justice		
DOL	Department of Labor		
DSA	Department of State Auditor		
DST	Department of State Treasurer	WRC	Wildlife Resources Commission

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alyce W. Pringle v. Department of Education	88 OSP 0592 88 EEO 0992	Morgan	03 27 92
Susie Woodle v. Department of Commerce, State Ports Authority	88 OSP 1411	Mann	03 25 92
Fernando Demeco White v. DIIR, Caswell Center	89 OSP 0284	West	01 10 92
Cathy Faye Barrow v. DIIR, Craven County Health Department	89 DIIR 0715	Morgan	03 09 92
Barbara Trivette v. Department of Correction	90 OSP 0133	Morgan	05 20 92

**CONTESTED CASE DECISIONS**

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Kenneth W. White v. Employment Security Commission	90 OSP 0390	Becton	01/13/92
Craig S. Eury v. Employment Security Commission	90 OSP 0391	Becton	01/13/92
Jolene H. Johnson v. DHHR, Division of Medical Assistance	90 DHHR 0685	Morgan	02/21/92
Dover W. Walker v. Department of Environment, Health, & Natural Resources	90 OSP 0873 91 OSP 0180	Chess	05/06/92
Joseph F. Nunes v. DHR, Division of Social Services, CSE	90 CSE 1036	Morgan	04/15/92
Sgt. Carl Edmunds v. DHHR, Division of Social Services, CSE	90 CSE 1135	Nesnow	02/04/92
Rafael Figueroa v. DHR, Division of Social Services, CSE	90 CSE 1138	Morgan	03/30/92
Sammie L. Frazier v. DHHR, Division of Social Services, CSE	90 CSE 1167	Morgan	03/24/92
Richard A. Boyett v. DHHR, Division of Social Services, CSE	90 CSE 1184	Morgan	03/30/92
Lance McQueen v. DHHR, Division of Social Services, CSE	90 CSE 1204	Morgan	03/30/92
Kermit Linney v. Department of Correction	90 OSP 1380	Morrison	02/12/92
Larry D. Oates v. Department of Correction	90 OSP 1385	Becton	04/06/92
Antonio S. Henderson v. DHHR, Division of Social Services, CSE	90 CSE 1391	Becton	05/04/92
Fernando Guarachi v. DHR, Division of Social Services, CSE	90 CSE 1393	Morgan	04/07/92
Jerry Odell Johnson v. Sheriffs' Education & Training Standards Comm	90 DOJ 1411	Morgan	01/09/92
Stoney W. & Darlene L. Thompson v. Department of Environment, Health, & Natural Resources	91 EHHR 0003	West	01/06/92

**CONTESTED CASE DECISIONS**

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Gloria Jones/Medbill v. Children Special Health Services	91 EHR 0142	Morgan	03/11/92
Shonn S. Peek v. Bd of Trustees/Teachers' & St Emp Retirement Sys	91 DST 0147	Gray	04/16/92
Willie C. Rorie v. DHR, Division of Social Services, CSE	91 CSE 0166	Morgan	04/13/92
Thomas Such v. EHR and William W. Cobey Jr.	91 OSP 0202	Beeton	02/20/92
N.C. Human Relations Comm. on behalf of Deborah Allen v. Charles Watkins	91 HRC 0204	Morrison	03/17/92
Cindy Gale Hyatt v. Department of Human Resources	91 DHR 0215	Morgan	02/27/92
Gliston L. Morrisey v. Bd of Trustees/Teachers' & St Emp Retirement Sys	91 DST 0232	West	02/03/92
Anthony Caldwell v. Juvenile Evaluation Center	91 OSP 0259	Morgan	03/12/92
Kenneth R. Downs, Guardian of Mattie M. Greene v. Teachers' & St Emp Comp Major Medical Plan	91 DST 0261	Gray	02/20/92
Deborah W. Clark v. DHR, Dorothea Dix Hospital	91 OSP 0297	Nesnow	01/16/92
Wade R. Bolton v. DHR, Division of Social Services, CSE	91 CSE 0312	Mann	01/14/92
Betty L. Rader v. Teachers' & St Emp Major Medical Plan	91 DST 0330	Morgan	01/10/92
Marcia Carpenter v. UNC - Charlotte	91 OSP 0346	Mann	03/12/92
James Arthur Lee v. NC Crime Victims Compensation Commission	91 CPS 0355	Chess	03/05/92
Fred A. Wilkie v. Wildlife Resources Commission	91 OSP 0398	Chess	04/20/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Michael Darwin White v. Department of Environment, Health, & Natural Resources	91 OSP 0413	Morrison	02 14 92
Curtis Wendell Bigelow v. CCPS, Division of State Highway Patrol	91 OSP 0418	West	03 10 92
Alcoholic Beverage Control Commission v. Hilsinger Enterprises, Inc., t/a The Waterin Hole	91 ABC 0442	Gray	01 10 92
Penny Whitfield v. Pitt County Mental Health Center	91 OSP 0465	Gray	01 08 92
Senior Citizens' Home Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0467	Gray	02 18 92
Alcoholic Beverage Control Commission v. Everett Lee Williams Jr., t/a Poor Boys Gameroom	91 ABC 0531	Morrison	01 31 92
Jonathan Russell McCravey, t/a Encore v. Alcoholic Beverage Control Commission	91 ABC 0534	Morrison	02 04 92
Dorothy 'Cris' Crissman v. Department of Public Instruction	91 OSP 0581	Morrison	04 03 92
Horace Britton Askew Jr. v. Sheriffs' Education & Training Standards Comm	91 DOJ 0610	Reilly	01 22 92
Roy L. Keever v. Department of Correction	91 OSP 0615	West	02 26 92
Ten Broeck Hospital (Patient #110587, Medicaid #124-24-4801-C) Ten Broeck Hospital (Patient #110538, Medicaid #240334254S) Ten Broeck Hospital (Patient #110788, Medicaid #900-12-6762-T) v. DHHR, Division of Medical Assistance	91 DHR 0618 91 DHR 0429 91 DHR 1265 Morrison		04 08 92
Larry Madison Chatman, t/a Larry's Convenient Store v. Alcoholic Beverage Control Commission	91 ABC 0626	Gray	02 20 92
Lester L. Baker Jr. v. Bd of Trustees Teachers' St Employees' Retirement Sys	91 DST 0639	Becton	05 28 92
Cecil Leon Neal v. Department of Economic & Community Development	91 OSP 0648	Mann	02 07 92

**CONTESTED CASE DECISIONS**

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
DAG, Food & Drug Protection Div, Pesticide Section v. D. Carroll Vann	91 DAG 0654	Morrison	01/15/92
Kidd's Day Care and Preschool v. Child Day Care Section	91 DHR 0666 91 DHR 0666	Becton	03/25/92 04/10/92
Mary Tisdale v. Hyde County Health Department and EHR	91 EHR 0679	Morgan	03/23/92
Alcoholic Beverage Control Commission v. Kenneth Richard Cooper, t/a Silvers	91 ABC 0680	Becton	02/26/92
Sarah Linda Hankins v. Alcoholic Beverage Control Commission	91 ABC 0688	Mann	02/27/92
Keith Hull v. DHR - Division of Medical Assistance	91 DHR 0707	Chess	02/27/92
Alcoholic Beverage Control Commission v. Spring Garden Bar & Grill Inc., T/A Spring Garden Bar & Grill	91 ABC 0753	Morrison	05/08/92
Nalley Commercial Properties v. Department of Environment, Health, & Natural Resources	91 EHR 0757	Becton	05/08/92
John E. Canup v. DHR, Division of Social Services, CSE	91 CSE 0759	Reilly	01-13-92
Falcon Associates, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 0767 91 EHR 0768	West	01-06-92
Michael F. Stone v. Bd of Trustees Local Gov't Emp Retirement Sys	91 DST 0771	West	02-24-92
Ruben Gene McLean v. Alcoholic Beverage Control Commission	91 ABC 0772	Nesnow	01/30/92
Bobby McEachern v. Fayetteville State University	91 OSP 0839	Gray	02/06/92
Singletree, Inn v. EHR, and Stokes County Health Department	91 EHR 0840	Nesnow	01/16/92
Henry B. Barnhardt v. Mt Pleasant Vol Fire Dept, St Auditor Firemen's Rescue Squad Workers' Pension Fund	91 DSA 0843	Reilly	01/29/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Mackey L. Hall v. DHR, Division of Social Services, CSE	91 CSE 0854	Reilly	01 17 92
Gloria J. Woodard v. Division of Motor Vehicles	91 OSP 0855	Mann	04 09 92
Kay Long v. Department of Human Resources	91 OSP 0855		04 13 92
Alcoholic Beverage Control Commission v. Mack Ray Chapman, t a Ponderosa Lounge	91 ABC 0887	Morrison	01 31 92
Joseph W. Devlin Jr., Johnson Brothers Carolina Dist v. Alcoholic Beverage Control Commission	91 ABC 0890	West	02 11 92
Ossie Beard v. EHR & Wastewater Treatment Plant Certification Comm.	91 EHR 0893	Nesnow	03 12 92
Thomas A. Ritter v. Department of Human Resources	91 OSP 0907	Mann	05 19 92
Alcoholic Beverage Control Commission v. Trinity C. C., Inc., t a Trinity College Cafe	91 ABC 0915	West	02 11 92
N.C. Alcoholic Beverage Control Commission v. Jessie Pendergraft Rigsbee, T/A Club 2000	91 ABC 0919	West	03 12 92
Alcoholic Beverage Control Commission v. Cedric Warren Edwards, t a Great American Food Store	91 ABC 0923	Becton	02 26 92
Department of Environment, Health, & Natural Resources v. Hull's Sandwich Shop, Andy Hull	91 EHR 0936	West	01 09 92
Betty Davis d b a ABC Academy v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 0955	Morrison	01 31 92
Thomas J. Hailey v. EHR and Rockingham County Health Department	91 EHR 0957	Becton	01 15 92
Ronald Waverly Jackson v. EHR, Division of Maternal & Child Health, WIC Section	91 EHR 0963	Gray	02 24 92
Century Care of Laurinburg, Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0981	Gray	03 24 92
James K. Moss Sr. v. DHR, Division of Social Services, CSE	91 CSE 0985	Reilly	05 18 92

**CONTESTED CASE DECISIONS**

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
David J. Anderson v. DHR, Division of Social Services, CSE	91 CSE 0989	Morgan	04/20/92
David Lee Watson v. DHR, Division of Social Services, CSE	91 CSE 0992	Reilly	05/18/92
Herbert R. Clayton v. DHR, Division of Social Services, CSE	91 CSE 1000	Mann	04/02/92
Roy Shcaley v. Victims Compensation Commission	91 CPS 1002	Morrison	01/31/92
Joe L. Williams Jr. v. DHR, Division of Social Services, CSE	91 CSE 1014	Morrison	04/30/92
Willie Brad Baldwin v. DHR, Division of Social Services, CSE	91 CSE 1020	Reilly	01/28/92
Clinton Dawson v. N.C. Department of Transportation	91 OSP 1021	Mann	03/05/92
Benjamin C. Dawson v. Department of Correction	91 OSP 1025	West	02/18/92
Paulette R. Smith v. DHR, Division of Social Services, CSE	91 CSE 1026	Reilly	02/27/92
Scot Dawson v. Department of Labor	91 DOL 1031	West	02/24/92
Luis A. Rosario v. DHR, Division of Social Services, CSE	91 CSE 1046	Morrison	03/03/92
Elijah Jefferson Jr. v. DHR, Division of Social Services, CSE	91 CSE 1055	Gray	04/20/92
Randy Quinton King v. CCPS, State Highway Patrol	91 OSP 1064	Gray	03/24/92
Ronnie C. Glenn v. DHR, Division of Social Services, CSE	91 CSE 1066	Nesnow	05/05/92
James D. Robinson v. DHR, Division of Social Services, CSE	91 CSE 1068	Gray	04/29/92
William H. Hogsd v. DHR, Division of Social Services, CSE	91 CSE 1070	Nesnow	03/16/92

**CONTESTED CASE DECISIONS**

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
David L. Brown v. DHR, Division of Social Services, CSE	91 CSE 1074	Morrison	03/31/92
Donald M. Washington v. DHR, Division of Social Services, CSE	91 CSE 1078	Morrison	03/04/92
William F. Driscoll v. DHR, Division of Social Services, CSE	91 CSE 1080	Mann	04/28/92
Melvin L. Miller Sr. v. DHR, Division of Social Services, CSE	91 CSE 1084	Morrison	03/16/92
Bobby G. Evans v. DHR, Division of Social Services, CSE	91 CSE 1094	Reilly	01/13/92
William Louis Timmons v. DHR, Division of Social Services, CSE	91 CSE 1104	Mann	02/18/92
Gerald Richardson v. DHR, Division of Social Services, CSE	91 CSE 1112	Morgan	05/06/92
Edmund D. Hester v. DHR, Division of Social Services, CSE	91 CSE 1113	Mann	04/21/92
Raymond Junior Cagle v. DHR, Division of Social Services, CSE	91 CSE 1123	Mann	03/30/92
Richard E. Murray v. Department of Human Resources	91 CSE 1134	Reilly	01/13/92
Pathia Miller v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 1135	Mann	03/31/92
Atlantic Enterprises, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 1136	Reilly	01/23/92
Theresa M. Sparrow v. Criminal Justice Education & Training Standards Comm	91 DOJ 1138	Mann	02/04/92
Darrel D. Shields v. DHR, Division of Social Services, CSE	91 CSE 1141	Morgan	03/30/92
John H. Price v. DHR, Division of Social Services, CSE	91 CSE 1142	Morgan	05/06/92
Jerry Dexter Morrison Sr. v. DHR, Division of Social Services, CSE	91 CSE 1144	Nesnow	05/21/92

**CONTESTED CASE DECISIONS**

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
James A. Hinson v. DHR, Division of Social Services, CSE	91 CSE 1154	Mann	02 18 92
George H. Parks Jr. v. DHR, Division of Social Services, CSE	91 CSE 1157	Morrison	01 27 92
Adrian Chandler Harley v. DHR, Division of Social Services, CSE	91 CSE 1180	Nesnow	02 10 92
Billy J. Hall v. DHR, Division of Social Services, CSE	91 CSE 1182	Nesnow	02 10 92
Donaldson L. Wooten v. DHR, Division of Social Services, CSE	91 CSE 1189	Reilly	03 13 92
William P. Reid v. DHR, Division of Social Services, CSE	91 CSE 1193	Nesnow	02 04 92
Jeddie R. Bowman v. DHR, Division of Social Services, CSE	91 CSE 1195	Morrison	04 30 92
Ronald G. Bolden v. DHR, Division of Social Services, CSE	91 CSE 1208	Gray	02 26 92
Wayne Phillip Irby v. DHR, Division of Social Services, CSE	91 CSE 1211	Nesnow	02 04 92
Tony Hollingsworth v. DHR, Division of Social Services, CSE	91 CSE 1212	Nesnow	02 10 92
Charles W. Norwood Jr. v. DHR, Division of Social Services, CSE	91 CSE 1215	Mann	05 19 92
Russell G. Ginn v. Department of Correction	91 OSP 1224	Reilly	02 14 92
Angela McDonald McDougald v. DHR, Division of Social Services, CSE	91 CSE 1227	Nesnow	02 28 92
String O. Mbye v. DHR, Division of Social Services, CSE	91 CSE 1228	Mann	03 11 92
Jimmie McNair, D.B.A. Pleasure Plus v. Alcoholic Beverage Control Commission	91 ABC 1235	Gray	05 04 92
Arthur Thomas McDonald Jr. v. DHR, Division of Social Services, CSE	91 CSE 1252	Morrison	03 31 92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Stanford Earl Kern v. DHR, Division of Social Services, CSE	91 CSE 1255	Nesnow	02/04 92
Gene Weaver v. DHR, Division of Social Services, CSE	91 CSE 1264	Reilly	03/25 92
James T. White v. DHR, Division of Social Services, CSE	91 CSE 1271	Gray	02/27/92
Ronald Brown and Regina Brown v. DHR, Division of Facility Services	91 DHR 1278	Becton	02/25 92
Terrance Freeman v. DHR, Division of Social Services, CSE	91 CSE 1283	Nesnow	05/04 92
Samuel Armwood v. David Brantley, Wayne County Clerk of Superior Court	91 CSE 1285	Reilly	02/11/92
Peter Gray Coley v. DHR, Division of Social Services, CSE	91 CSE 1297	Reilly	04/21/92
Enos M. Cook v. DHR, Division of Social Services, CSE	91 CSE 1303	Morrison	04/13/92
Raymond Vaughan v. DHR, Division of Social Services, CSE	91 CSE 1304	Reilly	03/09/92
Stevie Wayne Yates v. EHR and The Jones County Health Department	91 EHR 1305	Mann	05/29/92
Stanley Wayne Gibbs v. Elizabeth City State University	91 OSP 1318	Gray	01/14/92
David Martin Strode v. DHR, Division of Social Services, CSE	91 CSE 1327	Morgan	03/19/92
Mary T. Blount v. EHR and Hyde County Health Department	91 EHR 1331	Reilly	05/21/92
Anthony T. McNeill v. DHR, Division of Social Services, CSE	91 CSE 1336	Becton	04/20/92
D. C. Bass v. Department of Crime Control and Public Safety	91 OSP 1341	Chess	04/07/92
Wallace Day Care Center v. DHR, Division of Facility Services	91 DHR 1343	Nesnow	05/04/92

**CONTESTED CASE DECISIONS**

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Steveason M. Bailey v. McDowell Technical Community College	91 OSP 1353	Morrison	01/28/92
Gary N. Rhoda v. Department of Correction	91 OSP 1361	Nesnow	01/31/92
William A. Sellers v. DHR, Division of Social Services, CSE	91 CSE 1395	Gray	04/01/92
Marc D. Walker v. CCPS, Division of State Highway Patrol	91 OSP 1399	Morrison	03/16/92
Serena Gaynor v. DHIR, Division of Vocational Rehabilitation	91 OSP 1403	Gray	03/02/92
Betty Davis, D/B/A ABC Academy v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 1408	Chess	03/30/92
Bill Jones Jr. and Jessie F. Jones v. Department of Human Resources	91 DHR 1411	Nesnow	05/01/92
Leroy Robinson, Frank's Lounge v. Alcoholic Beverage Control Commission	91 ABC 1416	Gray	05/28/92
Charles R. Wellons II v. Department of Environment, Health, & Natural Resources	91 EHR 1418	West	02/25/92
Connie Flowers v. EHR and Hyde County Health Department	91 EHR 1420	Reilly	05/21/92
Charley Joe Milligan v. Bd of Trustees/Local Gov't Emp Retirement Sys	91 DST 1424	Gray	02/27/92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	91 OSP 1429 91 OSP 1430	Gray	03/13/92
James R. Fath v. Crime Victims Compensation Commission	91 CPS 1451	Morrison	04/15/92
Janet Thompson v. DHR, Div Facility Sves, Durham Cty Dept Social Sves	91 DHIR 1452	Gray	05/19/92
AB&S Exteriors (Arthur F. Williams Jr., Pres) v. Department of Labor, Wage & Hour Division	92 DOL 0001	Chess	05/18/92
Ollie Robertson v. Crime Victims Compensation Commission	92 CPS 0002	Morrison	04/15/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
New Bern-Craven County Board of Education, a Statutory Corporation of North Carolina v. The Honorable Harlan E. Boyles, State Treasurer, The Honorable Fred W. Talton, State Controller, The Honorable William W. Cobey, Jr., Sec. of EHIR, Dr. George T. Everett, Dir., Div. of Environmental Mgmt.	92 EHR 0003	Reilly	03/13/92
Ellen Allgood, The Red Bear Lounge, Inc., 4022 North Main St., High Point, NC 27265 v. Alcoholic Beverage Control Commission	92 ABC 0007	Chess	04/07/92
Robert Gooden v. Department of Labor, Wage & Hour Division	92 DOL 0009	West	05/14/92
Mrs. Gillie L. Edwards, Swift Mart #3 v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0022	Morrison	05/18/92
Private Protective Services Board v. Robert R. Missildine, Jr.	92 DOJ 0025	Becton	03/23/92
Cindy G. Bartlett v. Department of Correction	92 OSP 0029	Reilly	03/16/92
Mr. Kenneth L. Smith, Pitt County Mart, Inc. v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0085	Becton	04/15/92
Kurt Hafner v. N.C. Retirement System et al.	92 DST 0094	Gray	03/04/92
Margaret Coggins v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0095	Becton	04/28/92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	92 OSP 0096	Gray	03/13/92
Paula Dail v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0098	Becton	04/28/92
Youth Focus, Inc. (MID # 239-23-0865T) v. DHR, Division of Medical Assistance	92 DHR 0110	Gray	02/26/92
Charles W. Parker v. Department of Agriculture	92 OSP 0177	Reilly	04/27/92
Potters Industries, Inc. v. William J. Stuckey, St Purchasing Off, & NC Div of Purchase & Contract	92 DOA 0180	Nesnow	05/20/92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Brunswick County v. Department of Environment, Health, & Natural Resources	92 EHR 0195	Morrison	04/21/92
Jessie Draft, Owner Sabrina's Day Care Ctr v. Department of Human Resources	92 DHR 0197	Reilly	06/01/92
John Marley Jr. v. Department of Correction	92 OSP 0213	Reilly	05/18/92
N.C. Private Protective Services Board v. Lawrence Donnell Morrissey	92 DOJ 0215	Chess	05/13/92
N.C. Private Protective Services Board v. Sherrill David Beasley	92 DOJ 0216	Chess	05/13/92
Timothy B. Milton v. Crime Victims Compensation Commission	92 CPS 0265	Reilly	05/18/92
Leon Scott Wilkinson v. Criminal Justice Education & Training Standards Comm	92 DOJ 0280	West	04/24/92
Thomas L. Rogers v. DHR, Division of Youth Services	92 OSP 0287	Gray	04/30/92
Larry A. Person Sr. v. Department of Transportation	92 OSP 0304	Reilly	05/28/92
Paul M. Fratazzi, LPN v. Polk Youth Institute	92 OSP 0325	Nesnow	05/01/92
Robert S. Scheer v. Department of Crime Control & Public Safety	92 CPS 0339	Gray	05/18/92
Jimmy Wayne Livengood v. Department of Correction	92 OSP 0352	Nesnow	05/27/92
Jeffrey Mark Drane v. Private Protective Services Board	92 DOJ 0372	Mann	05/12/92
Danny G. Hicks v. Private Protective Services Board	92 DOJ 0373	Mann	05/12/92
Max Bolick v. Private Protective Services Board	92 DOJ 0374	Mann	05/12/92
Fred Henry Hampton v. Criminal Justice Education & Training Stds Comm	92 DOJ 0393	West	04/23/92

## ***CONTESTED CASE DECISIONS***

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STATE OF NORTH CAROLINA  
COUNTY OF SURRY

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
90 OSP 0133

BARBARA TRIVETTE,  
Petitioner )  
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v. ) ORDER OF DISMISSAL  
 ) FINAL DECISION  
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N.C. DEPARTMENT OF CORRECTION )  
Respondent )

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This matter comes before the undersigned administrative law judge upon the filing of the Respondent's Motion to Dismiss on March 19, 1990. On April 12, 1990, the Petitioner filed a document titled Response to Motion to Dismiss. The Respondent filed an additional argument in support of its Motion to Dismiss on April 27, 1990. In its arguments in support of dismissal, the Respondent states that the Petitioner's claims of constructive discharge and the presence of inaccurate and misleading information in her personnel file are not properly before the Office of Administrative Hearings, based upon alleged untimeliness in the initiation of her contested case. The Respondent also contends that the Petitioner has failed to first pursue her problem or grievance through the Respondent's agency channels as required by statutory law. The Respondent further asserts that the Office of Administrative Hearings does not have jurisdiction over this contested case because the Petitioner was not a permanent State employee with appeal rights under Chapter 126 of the North Carolina General Statutes. In her Response to Motion to Dismiss, the Petitioner denies the Respondent's contention that the Office of Administrative Hearings lacks jurisdiction over this contested case and further argues that the Respondent's contention that it took no action against her under N.C.G.S. §126-35 is unsupported in light of the Petitioner's claim of a coerced discharge.

The record of this contested case indicates that the Petitioner became employed by the Respondent as of September 1, 1988 as a Correctional Health Assistant II in a new paygrade 62 position at step 3C. She had previously been employed by the Respondent for a period of 12 months as a Staff Nurse in a grade 68 position at Step 1. The Petitioner was suspended from her position with the Respondent on July 24, 1989 due to pending criminal charges. In a memorandum dated September 22, 1989, the Petitioner resigned from her Correctional Health Assistant II position effective September 22, 1989. In a letter dated November 27, 1989, the Petitioner indicated that she was filing a grievance concerning her prior position of employment with the Respondent, since she was asked to resign from employment with the Respondent, since she was asked to resign from her position or she would be fired, although she has not yet been tried on the criminal charges and had been subsequently found not guilty of all charges in a trial conducted on November 8, 1989. The Petitioner filed a Petition for a Contested Case Hearing with the Office of Administrative Hearings on February 12, 1990, alleging that one of the Respondent's officials obtained a letter of resignation from her 'by undue influence, duress, and threats of reprisal.' The Petitioner contends that her resignation from her employment with the Respondent was involuntary.

### **CONCLUSIONS OF LAW**

North Carolina General Statutes Section 126-39 states, in pertinent part:

'For the purpose of this Article [8], except for portions subject to competitive service and except for appeals brought under G.S. 126-16 and 126-25, the terms 'permanent State employee,' 'permanent employee,' 'State employee' or 'former State employee' as used in this article shall mean a person

1. . . .
2. in a grade 61 to grade 65 position who has been continuously employed by the State of North Carolina for the immediate 36 preceding months. . . '

## CONTESTED CASE DECISIONS

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N.C.G.S. §126-25 states, again in pertinent part:

' . . . An employee, former employee or applicant for employment who objects to material in his file because he considers it inaccurate or misleading may seek the removal of such material from his file in accordance with the grievance procedure of that department, including appeal to the State Personnel Commission.'

Finally, the pertinent part of N.C.G.S. §126-35 states:

'No permanent employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause. . .' (EMPHASIS ADDED)

These cited statutory provisions are all applicable to the disposition of the motion to dismiss at issue. The Petitioner alleges in her Petition for a Contested Case Hearing and discusses in her Response to Motion to Dismiss that her resignation was not voluntary, but was instead a 'coerced discharge' which was forced by an official of the Respondent. Assuming, arguendo, that the Petitioner's contentions are true, then the Petitioner's employment termination was in the nature of a dismissal and not a resignation. Title 25, Subchapter 1D, Rule .0505 of the North Carolina Administrative Code defines the term 'dismissal' as 'involuntary separation for cause.' Since the Petitioner has advanced the position that her resignation was involuntarily submitted to the Respondent, then such a coerced discharge, if true, constitutes an act of dismissal by the Respondent.

The cited provision of N.C.G.S. §126-35 establishes that no permanent employee subject to the State Personnel Act, which is embodied in Chapter 126 of the North Carolina General Statutes, can be discharged from his or her employment for disciplinary reasons without just cause. As the Respondent has raised in its additional argument in support of its motion to dismiss, the Petitioner, as an employee of the State in a paygrade 62 position as a Correctional Health Assistant II, must have been continuously employed by the State for the 36-month period immediately preceding her separation from employment in order to be recognized as a 'permanent employee' as used in N.C.G.S. §126-35 and defined in N.C.G.S. §126-39(2) in order to be eligible to appeal this allegedly coerced discharge under the State Personnel Act. The record in this contested case shows that the Petitioner became employed as a Correctional Health Assistant II as of September 1, 1988 and had been previously employed by the Respondent for 12 months as a Staff Nurse immediately prior to her 11-month stint as Correctional Health Assistant II. The Petitioner therefore had 23 continuous months of employment with the Respondent immediately prior to the termination of her employment, which is 13 months less than the minimum 36 months of continuous employment by the State of North Carolina required under N.C.G.S. §126-39 for the Petitioner to be eligible to appeal her alleged coerced discharge under N.C.G.S. §126-35. The Petitioner therefore is not entitled to appeal her separation from employment on a theory of coerced discharge, because she is not a permanent employee under N.C.G.S. §§126-35 and 126-39 with the right to challenge her termination on the basis of a lack of just cause.

However, the Petitioner has also advanced a theory of the existence of false and misleading information in her personnel file pursuant to N.C.G.S. §126-25. N.C.G.S. §126-39 expressly excepts employment appeals brought under N.C.G.S. §126-25 from the requirement that the grievant must be a permanent State employee as defined in N.C.G.S. §126-39 in order to initiate an employment appeal. The Petitioner claims in her petition that her letter of resignation constitutes false and misleading information in her personnel file because the resignation letter was allegedly procured by an official of the Respondent through the use of undue influence, duress and threats of reprisal. The Respondent contends in its Motion to Dismiss that the Petitioner's inaccurate and misleading information claim under N.C.G.S. §126-25 is not a proper one.

Although the Petitioner may base an employment appeal on N.C.G.S. §126-25 despite her lack of status as a permanent State employee, as expressly allowed under N.C.G.S. §126-39, nonetheless the Petitioner's reliance on N.C.G.S. §126-25 is misplaced here. The Petitioner is attempting to 'breathe life' into a cause of action by utilizing N.C.G.S. §126-25 which she could not otherwise bring under N.C.G.S. §126-35 because she is not a permanent employee covered by the State Personnel Act; yet, her appeal is clearly premised upon an unlawful discharge claim under N.C.G.S. §126-35 as evidenced by the

Petitioner's contentions in her Petition for a Contested Case Hearing and Response to Motion to Dismiss. The clear intent of N.C.G.S. §126-35 is to afford a State employee, a former State employee and an applicant for State employment with a means by which to eliminate documentation which is misleading or untrue from the individual's personnel file. Assuming, again arguendo, that the Petitioner successfully prosecuted this contested case in a hearing on the merits, the outcome of the matter would be the reinstatement of the Petitioner's employment through the removal of the Petitioner's resignation letter from her personnel file as inaccurate or misleading information, even though the Petitioner truly contests this matter on the basis of unlawful discharge which she otherwise could not bring.

While a novel and ingenious approach to a cause of action is admirable, nonetheless a petitioner cannot be allowed to prosecute a contested case which is expressly foreclosed by statute by merely claiming that the action is being brought under another statute, yet all contentions are based upon the provisions of the original unavailable statute. Here, the Petitioner's cause of action based on the allegation of coerced discharge by the Respondent under N.C.G.S. §126-35 cannot survive the Respondent's motion to dismiss pursuant to N.C.G.S. §126-39 merely because the Petitioner utilizes the 'inaccurate and misleading material' language of N.C.G.S. §126-25 while continuing to premise her contested case on the unavailable ground of unlawful discharge.

The Petitioner is not a permanent employee as defined in N.C.G.S. §126-39(2) for the purpose of appealing her alleged discharge by the Respondent from its employ. The Respondent's motion to dismiss on the ground that the Petitioner is not a permanent State employee for the purpose of Article 8 of Chapter 126 of the North Carolina General Statutes is therefore granted. The Office of Administrative Hearings does not have jurisdiction to entertain this matter. It is unnecessary to address the remaining contentions of the Respondent in support of its Motion to Dismiss.

**FINAL DECISION**

This contested case is DISMISSED for lack of jurisdiction under N.C.G.S. §150B-36(c)(1).

**NOTICE**

In order to appeal a final decision, the person seeking review must file a petition with the Superior Court of Wake County or with the superior court of the county where the person resides. The petition for judicial review must be filed within thirty days after the person is served with a copy of the final decision. N.C.G.S. §150B-46 describes the contents of the petition and requires service of the petition on all parties.

This the 20th day of May, 1992.

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Michael Rivers Morgan  
Administrative Law Judge

## ***CONTESTED CASE DECISIONS***

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STATE OF NORTH CAROLINA  
COUNTY OF MARTIN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
91 DST 0639

LESTER L. BAKER, JR., )  
Petitioner )  
v. ) RECOMMENDED DECISION  
THE BOARD OF TRUSTEES OF THE )  
TEACHERS' AND STATE EMPLOYEES'  
RETIREMENT SYSTEM, )  
Respondent )

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This matter was heard before Brenda B. Becton, Administrative Law Judge, on December 19, 1991, in Raleigh, North Carolina. At the conclusion of the hearing, the parties elected to exercise their right to file written submissions as provided for in North Carolina General Statutes section 150B-34(b). The record was closed on April 15, 1992.

### **APPEARANCES**

For Petitioner: WEAVER & MCBENNET, attorneys at Law, Raleigh, North Carolina; Reagan H. Weaver appearing.  
For Respondent: Alexander McC. Peters, Assistant Attorney General, North Carolina Department of Justice, Raleigh, North Carolina.

### **ISSUE**

Whether the Respondent properly denied the Petitioner's application for extended short-term or long-term disability benefits.

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, the undersigned makes the following:

### **FINDINGS OF FACT**

#### **Stipulated Facts**

1. The Petitioner was involved in a rear end vehicular accident while on Naval Reserve duty on September 12, 1987. The Petitioner received a whiplash injury to his neck, a contusion to the back of his head, and muscle strains in his shoulders, especially the left shoulder. The nature and extent of his injury was described on September 12, 1987 as being cervical neck and shoulder strain with possible closed head injury.
2. Prior to the September 12, 1987 collision, the Petitioner claimed no disability preventing or interfering with his ability to perform his duties as a Motor Equipment Operator I with the North Carolina Department of Transportation.
3. The Petitioner has met all statutory requirements under the North Carolina General Statutes to be eligible for consideration of his application for extended short-term disability benefits and/or long-term disability benefits.

#### **Adjudicated Facts**

4. Following his accident, the Petitioner was seen by various military doctors and other physicians and therapist for diagnosis and treatment of his neck and shoulder injuries.

5. On March 5, 1988, the Petitioner, on the advice of his treating physicians, attempted to return to work for the Department of Transportation (hereinafter 'DOT'). Although he had been advised by his physicians to abstain from certain types of work, he attempted to perform all the duties and responsibilities of his job.
6. The Petitioner's job responsibilities with DOT included shoveling and raking asphalt, driving truck, spraying tar, and operating pavers and rollers.
7. The strain created by raking and shoveling asphalt, driving trucks, especially dump trucks, and the need to constantly turn his head to watch for traffic when operating the paver and roller machine caused the Petitioner to experience difficulty performing his job duties because of the loss of range of motion in his neck and the incapacitating pain he experiences upon movement.
8. The Petitioner was informed that his employment with DOT could not continue until his physical condition improved to the point that he was able to perform all of the duties required by his job.
9. The Petitioner continued to experience pain and was unable to continue to perform the duties and responsibilities of his job. On May 25, 1988, he ceased his work for the DOT.
10. The Medical Board of the Retirement System subsequently approved the Petitioner's short-term disability as a result of cervical sprain, effective May 26, 1988 to April 24, 1989, the date he was examined by Dr. Lee A. Whitehurst.
11. Gene Hamilton, M.D., an orthopedic surgeon, examined the Petitioner on three occasions: July 14, 1988, August 30, 1988, and February 1, 1989. Dr. Hamilton diagnosed chronic cervical sprain secondary to automotive trauma and concluded that the Petitioner suffered from a twenty-five percent permanent partial disability. He recommended that the Petitioner seek sedentary work.
12. S. Mitchell Freedman, M.D., a neurologist evaluated the Petitioner on October 3, 1990 and found that he was permanently disabled from performing his job with the DOT because of chronic cervical muscle spasm. Dr. Freedman was of the opinion that because of the Petitioner's chronic pain, it would be extremely difficult and unrealistic to expect the Petitioner to engage in upper body muscular activity.
13. The Petitioner was discharged from the military in August, 1988 with a ten percent permanent partial disability.
14. The Petitioner's military disability rating was increased in July, 1991 to twenty percent permanent partial disability.
15. In late October or early November, 1989, the Petitioner submitted his Application for Long-Term or Extended Disability Benefits.
16. The Respondent's Medical Board is charged with the responsibility of reviewing applications for long-term disability benefits, together with supporting documents and medical records, to determine whether the applicant meets the requirements for such benefits from the Disability Income Plan.
17. The Petitioner's medical records and documentation were reviewed by Walter Hunt, M.D., an orthopedic surgeon and member of the Respondent's Medical Board. The Medical Board's decision to deny the Petitioner's application for long-term disability benefits was based upon Dr. Hunt's opinion that the Petitioner's injury was not likely to be permanent.
18. Dr. Hunt never examined the Petitioner. Dr. Hunt's opinion that the Petitioner's injury was not likely to be permanent is based upon his medical experience and his belief that according to generally accepted medical opinion in orthopedics, cervical muscle strain is not normally a permanent condition. Dr. Hunt is also of the opinion that there must be some measurable objective evidence of pain and injury before a condition can be labelled as likely to be permanent.

9. Dr. Hunt also relied upon a medical report from Dr. Lee A. Whitehurst in reaching the conclusion that the Petitioner did not qualify for disability benefits. Dr. Whitehurst evaluated the Petitioner in order to render an opinion about his disability as it related to his entitlement to Workers Compensation benefits.
10. The standard by which permanent disability is determined for the Respondent is different from the standard that is used to determine disability for Workers Compensation benefits.
11. Since his injury, there are a wide range of personal activities that the Petitioner has been and continues to be unable to perform, including but not limited to raking and mowing his yard; playing football, volleyball, and horseshoes; horseplay with his son; and activities around the house.
12. Since May 26, 1988, the Petitioner has been and continues to be physically unable to perform the duties required of him as a Machine Operator I for the DOT.
13. As of August 30, 1988, it appears that the Petitioner's inability to physically perform the duties required of him as a Machine Operator I for the DOT is likely to be permanent.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. The parties are properly before the Office of Administrative Hearings.
2. Section 135-106(a) of the North Carolina General Statutes provides that the Respondent's Medical Board must certify that an applicant for long-term disability benefits has a disability that is likely to be permanent before he may approve the application for long-term disability.
3. The Respondent's conclusion that since a normal cervical strain does not normally result in permanent injury, then the Petitioner's cervical strain could not possibly be permanent is not supported by the facts in this case.
4. The Petitioner is not the 'average' cervical strain patient. His case should be decided based on the facts presented in his case and not what the facts might be for the 'average' cervical strain patient. For the Petitioner, the pain has continued, along with some loss of range of motion. The two doctors who examined him and testified are both of the opinion that the Petitioner's strain is chronic and renders him permanently unable to perform his job duties as a machine operator. Both of the Petitioner's doctors, Gene Hamilton and Mitchell Freedman, the Petitioner and his wife, and the Petitioner's other witnesses were all very credible.
5. The Respondent failed to offer any evidence that rebuts the Petitioner's evidence that he is no longer able to perform his job duties as a Machine Operator I as a result of the injuries he received on September 12, 1987 while still an employee of the DOT.
6. In light of both the fact that Dr. Hunt never examined the Petitioner and his belief that only pain that can be documented by objective testing is potentially permanent, Dr. Hunt's testimony that the Petitioner is not likely to be permanently disabled to perform his job duties with DOT was not as credible as the testimony of the Petitioner's doctors that the Petitioner's soft tissue injury has resulted in permanent disability.
7. The Petitioner was and has been continuously disabled since August 30, 1988 and is likely to be permanently disabled from the further performance of his duties as an employee of the DOT where he was employed at the time his disability was incurred.
8. The Respondent acted erroneously when it rejected the Petitioner's application for extended short-term disability and long-term disability compensation.

## ***CONTESTED CASE DECISIONS***

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9. The Petitioner has met all statutory requirements under the North Carolina General Statutes to be eligible for consideration of his application for extended short-term disability benefits and/or long term disability benefits.

### **RECOMMENDED DECISION**

The Board of Trustees of the Teachers' and State Employees' Retirement System will make the Final Decision in this contested case. It is recommended that the Board adopt the Findings of Fact and Conclusions of Law set forth above and pay the Petitioner retroactive and future long-term disability benefits effective from the date the Petitioner was first declared permanently partially disabled by Gene Hamilton M.D., that date being August 30, 1988. The Respondent shall deduct from the retroactive amount awarded all short-term benefits received by the Petitioner after August 30, 1988. Said benefits shall continue to be paid for the indefinite future, subject to the Respondent's normal procedures and regulations.

### **NOTICE**

Before the Board makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record and to the Office of Administrative Hearings.

This the 28th day of May, 1992.

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Brenda B. Becton  
Administrative Law Judge

## ***CONTESTED CASE DECISIONS***

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STATE OF NORTH CAROLINA  
COUNTY OF HYDE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
91 EHHR 1331

MARY T. BLOUNT, Petitioner	)	
	)	
	)	
	)	
v.	)	RECOMMENDED DECISION
	)	
	)	
NC DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, and HYDE COUNTY HEALTH DEPARTMENT, Respondent.	)	
	)	

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This contested case was commenced by the filing of petition on December 2, 1991. A hearing was conducted in Swan Quarter, North Carolina, on April 14, 1992. The record was held open until May 18, 1992 to allow the parties to submit written arguments and proposed findings of fact and conclusions of law. George Thomas Davis, Jr., appeared for the Petitioner. Marjorie S. Canaday, Associate Attorney General, appeared for the Respondent.

Based upon the substantial evidence admitted, including both sworn testimony of witnesses and documentary evidence, the undersigned Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. This contested case arose out of Petitioner's application filed October 24, 1990 for an improvement permit to install a ground absorption sewage system on her property on S.R. 1124 near Swan Quarter. The system would be used to serve a three-bedroom home.
2. The site was evaluated on November 10, 1990 by Mr. Grady Courson, Environmental Health Specialist, who was at that time employed on a part-time contractual basis by the Hyde County Health Department ('Health Department').
3. It was Courson's opinion that the site could be classified provisionally suitable if fill was placed on the lot, and he advised Petitioner of this. Courson did not issue an improvement permit for the site.
4. Relying on the assurances by Courson, the petitioner purchased the lot for three thousand, five hundred dollars (\$3,500.00).
5. On October 10, 1991, Mr. Richard Clayton, Regional Environmental Health Specialist, employed by the Department of Environment, Health, and Natural Resources ('DEHNR') evaluated the lot during a routine training session of an environmental health specialist intern.
6. Clayton determined that the site was unsuitable for installation of a ground absorption sewage system. He recommended to the Health Department that the State Soil Specialist evaluate the site.
7. On October 29, 1991, Dr. Robert L. Uebler, Soil Specialist, employed by DEHNR, evaluated the lot to determine its suitability under the 15A NCAC 18A .1900 *et seq.*, the laws and rules governing installation of septic tank systems.
8. Dr. Uebler is a Soil Specialist employed by the On-Site Wastewater Section of DEHNR. He acts as consultant to the local health departments in eastern North Carolina, including the Hyde County Health Department. Dr. Uebler holds a doctorate of philosophy degree in soil physics

and is qualified to testify as an expert in (1) the physics of soils, (2) disposal and treatment of sewage into soils under the laws and rules, and (3) site modification using artificial drainage, and (4) alternative systems such as fill systems.

9. Borings on the site made by Dr. Uebler revealed a soil which is organic from 0 to 25 inches and massive at 36 inches, with soil wetness within 12 inches of the natural soil surface. Dr. Uebler is able to evaluate the soil by looking at and feeling the soil. He has done this for many years.
10. Artificial drainage would not be effective on this site due to the organic soil, massive subsoil, and soil wetness condition within 12 inches of the natural soil surface.
11. A system installed in fill could not be expected to function properly on this site due to the organic soil and soil wetness condition within 12 inches of the natural soil surface.
12. Collection of the sewage off-site for treatment and disposal is the only option for this site.
13. By letter dated January 2, 1992, the Health Department notified Petitioner that her lot is properly classified unsuitable for installation of a ground absorption sewage system. The letter also advised Petitioner of her right to appeal to the Office of Administrative Hearings and her right to submit documentation pursuant to 15A NCAC 18A .1957(e) to show that in fact a system could reasonably be expected to function properly on her property.
14. Petitioner has not submitted any documentation pursuant to 15A NCAC 18A .1957(c).

Based on the foregoing findings of fact, the undersigned Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. The lowest of the uncorrectable site and soil characteristics determines the overall site classification for suitability for septic tank installation. 15A NCAC 18A .1947.
2. Petitioner's site has organic soil from 0 to 25 inches from the natural soil surface which is unsuitable under 15A NCAC 18A .1941(a)(4). The rule provides that organic soils shall be considered unsuitable.
3. The site has massive structure within 36 inches of the soil surface which is unsuitable under 15A NCAC 18A .1941(2)(E). The rule provides, in part, that soils which are massive within 36 inches of the natural soil surface shall be considered unsuitable as to structure.
4. The site has a soil wetness condition within 12 inches of the natural soil surface which is unsuitable under 15A NCAC 18A .1942. The rule provides, in part, that sites where soil wetness conditions exist within 36 inches of the natural soil surface shall be considered unsuitable as to soil wetness.
5. Due to the presence of the organic soils and massive soil structure, the site cannot be modified through the use of artificial drainage under 15A NCAC 18A .1956(2) or through the addition of fill under 15A NCAC 18A .1957(b).
6. The only option under 15A NCAC 18A .1900 et seq is collection of the sewage off-site for treatment and disposal.
7. Respondent used proper procedure and acted as is required by GS 130A-333 et seq and 15A NCAC 18A .1900 et seq in denying Petitioner's application for an improvement permit to install a conventional ground absorption sewage system on her lot.
8. The decision of Respondent to deny Petitioner's application for an improvement permit for her lot on S.R. 1124 near Swan Quarter was not arbitrary or capricious.

## ***CONTESTED CASE DECISIONS***

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9. Respondent is not prevented from denying Petitioner's application for an improvement permit under an estoppel theory. Our courts have consistently held that governmental agencies cannot be estopped from exercising the police power of the State to protect the public health. See e.g., Raleigh v. Fisher, 232 N.C. 629, 61 S.E.2d 897 (1950).

Based on the foregoing findings of fact and conclusions of law, the undersigned Administrative Law Judge makes the following:

### **RECOMMENDED DECISION**

The denial of Petitioner's application for an improvement permit to install a conventional ground absorption sewage system on her lot on S.R. 1124 near Swan Quarter should be affirmed.

### **ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

### **NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The respondent is the agency that will make the final decision in this contested case.

This the 21th day of May, 1992.

---

Robert Roosevelt Reilly Jr.  
Administrative Law Judge

## ***CONTESTED CASE DECISIONS***

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**STATE OF NORTH CAROLINA  
COUNTY OF DURHAM**

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
91 DHHR 1452**

JANET THOMPSON, )  
Petitioner )  
v. )  
NORTH CAROLINA DEPARTMENT OF )  
HUMAN RESOURCES, DIVISION OF )  
FACILITY SERVICES, )  
DURHAM COUNTY DEPARTMENT OF )  
SOCIAL SERVICES, )  
Respondent. )

**RECOMMENDED DECISION**

This case was heard before Beecher R. Gray, administrative law judge, on April 13, 1992 in Durham, North Carolina.

### **APPEARANCES**

Petitioner: Janet Thompson, appearing pro se

Respondent: Diane G. Miller, Esq.

### **ISSUE**

Whether Respondent's revocation of Petitioner's foster home license on grounds of child neglect was proper.

### **FINDINGS OF FACT**

1. The parties received notices of hearing by certified mail more than fifteen (15) days prior to the hearing and so stipulated.
2. On October 29, 1991, Respondent revoked Petitioner's family foster home license for alleged child neglect of a foster child placed in Petitioner's home. The neglect was based on the totality of methods used to discipline the foster child, Delton Dortsy, including name calling and making him sit in a dark room.
3. In July, 1991 the Durham County Department of Social Services received a report that foster child Delton Dortsy, then age eight, was being neglected by his foster parents, Petitioner Janet Thompson and her husband James Thompson. Child Protective Services Investigator Gail Lankford of the Wake County Department of Social Services conducted an investigation into the alleged child neglect of Delton Dortsy. She interviewed several people during the investigation.
4. Delton Dortsy has multiple psychological disorders, including hyperactivity and attention deficit disorder. Respondent, by and through its witness, Gail Lankford, made a judicial admission during her testimony that Delton Dortsy is unreliable as a witness and complainant. Delton Dortsy is extremely difficult for anyone to manage, including the Butner Children's Unit, where he now resides.
5. Michael Glascock was a resident of Petitioner's home during some of the time Delton Dortsy was there. Gail Lankford interviewed him during her investigation. Michael Glascock is described by Gail Lankford as a disturbed child with a history of being unreliable.

## ***CONTESTED CASE DECISIONS***

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6. Hasani Lee was in Petitioner's foster home in the summer of 1990 prior to Delton Dory's placement there. Gail Lankford interviewed Hasani Lee about his relationship with Petitioner but did not call him as a witness in this hearing.
7. Gail Lankford observed no evidence of physical marks or injuries to Delton Dory.
8. Petitioner has a good reputation with Durham County Department of Social Services for keeping the social workers informed with regard to children placed in her foster home.
9. All evidence produced by Respondent in this contested case concerning methods used by the Petitioner to discipline Delton Dory is based upon hearsay statements made by Delton Dory, Michael Glascock, and Hasani Lee to investigator Gail Lankford. Hasani Lee's statements, in addition to being hearsay, are not relevant because he was not in Petitioner's foster home during the period when Delton Dory was there. The statements of Delton Dory and Michael Glascock, in addition to being hearsay, are unreliable because each is a psychologically disturbed child who has a history of unreliability.
10. Respondent has the burden of showing by a preponderance of substantial evidence that it has proper grounds to revoke Petitioner's foster home license.

### **CONCLUSIONS OF LAW**

Based upon the foregoing findings of fact, I make the following conclusions of law.

1. The parties are properly before the Office of Administrative Hearings.
2. Respondent has produced no evidence in this contested case that Petitioner used improper methods of discipline with Delton Dory, a child entrusted to Petitioner's care in her foster home. Respondent has failed to carry the burden of proof it must carry in order to enforce its decision to revoke Petitioner's foster home license.

### **RECOMMENDED DECISION**

Based upon the foregoing findings of fact and conclusions of law, it is hereby recommended that Respondent rescind its revocation letter of October 29, 1991 to Petitioner and that Respondent's decision to revoke Petitioner's foster home license be reversed for lack of evidence.

### **ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

### **NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

*CONTESTED CASE DECISIONS*

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The agency that will make the final decision in this contested case is the Durham County Department of Social Services.

This the 19th day of May, 1992.

---

Beecher R. Gray  
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

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1	Administration	Architecture	2
2	Agriculture	Auctioneers	4
3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Dietetics Nutrition	17
10	Human Resources	Electrical Contractors	18
11	Insurance	Electrolysis	19
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14A	Crime Control and Public Safety	Hearing Aid Dealers and Fitters	22
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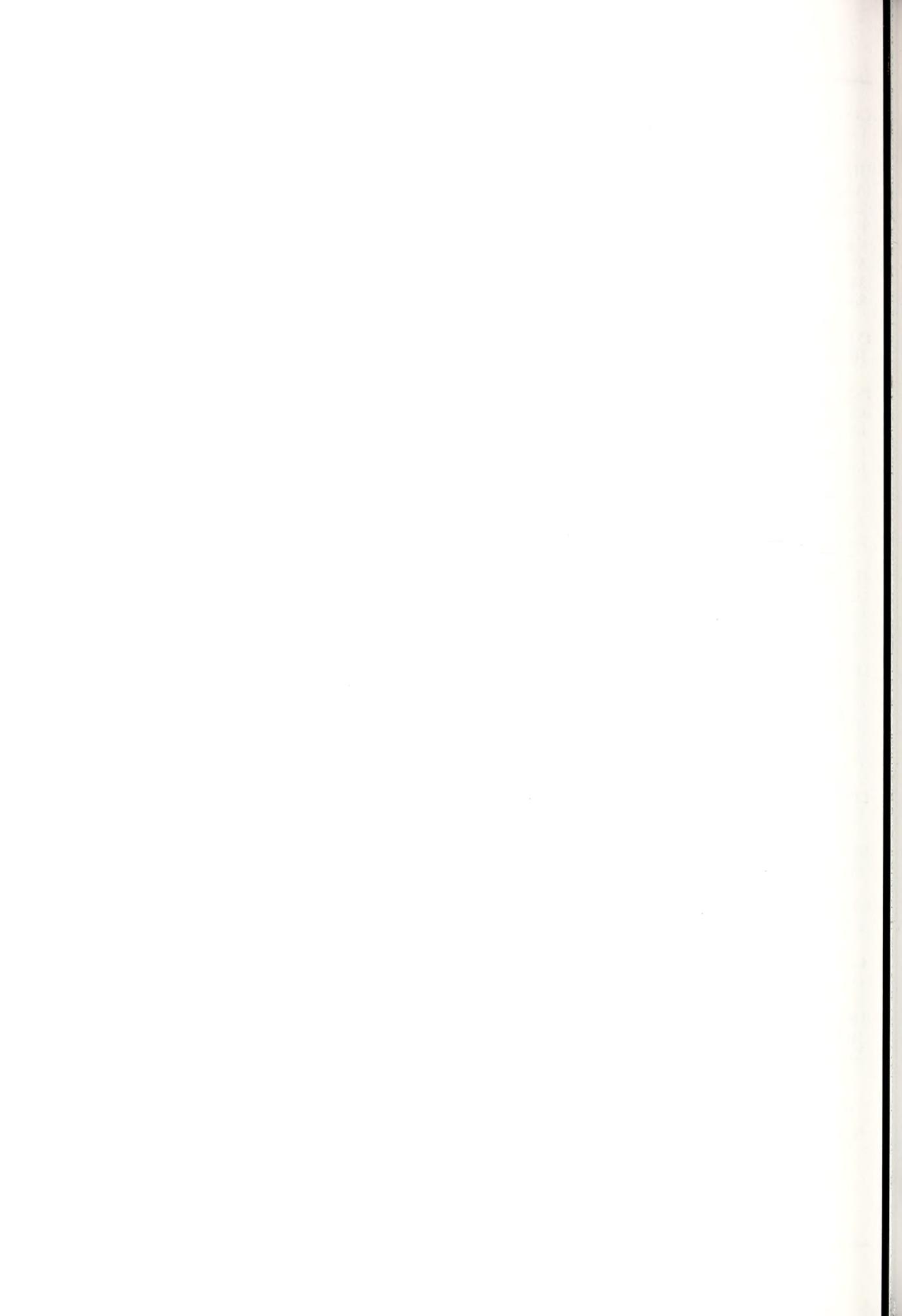
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